

GAHC040014542025



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

WP(C)/295/2024

Tomin Ete and 2 Ors

Age: 52

Occupation :

Address: Son of Late T Ete

resident of Vivek Vihar

Itanagar

PO and PS Itanagar

Papumpare District

Arunachal Pradesh

2: Vijay Passing

Age: 53

Occupation :

Address: Son of Ano Passing

resident of Parbuk Village

PO and PS Roing

Lower Dibang Valley District

Arunachal Pradesh

3: Sawimso Tayeng

Age: 52

Occupation :

Address: Son of Late Tuku Tayeng

permanent resident of Rangan Village

PO Hayuliang

PS Khupa

Anjaw District

Arunachal Pradesh

VERSUS

The State of AP and 17 Ors

Age: 0

Occupation :

Address: represented by the Commissioner/ Secretary

Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
2:Dollo Pura
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

3:Jobom Bam
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

4:Donya Lollen
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

5:Oni Ejing
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

6:Haniya Nabam Hina
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

7:Nabam Titu
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

8:Jumdo Kena
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

9:Hukkar Taipodia
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

10:Migo Basar
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar, Arunachal Pradesh.

11:Gyati Tani
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

12:Dojum Lollen
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

13:Rajen Mudang
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

14:Miss Nampi Boli
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

15:Ringgong Bitin
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh

Civil Secretariat
Itanagar
Arunachal Pradesh.

16:Smti Mum Tapak
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

17:Tumbom Angu
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

18:Pura Butang
Age: 0
Occupation :
Address:C/o the Commissioner / Secretary
Hydro Power Development Department
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

Advocate for : Nikita Danggen
Advocate for : GA (AP) appearing for The State of AP and 17 Ors: Advocate ,

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WP(C)/14/2022

Tomin Ete and 2 Ors.

Age: 67

Occupation :

Address:S/o Late T. Ete

Resident of Vivek Vihar

Itanagar

P.O/P.S Itanagar

District Papumpare

Arunachal Pradesh

2: Vijay Passing

Age: 58

Occupation :

Address:S/o Ano Passing

Permanent Resident of Parbuk Village

P.O/P.S Roing

Lower Dibang Valley District

Arunachal Pradesh

3: Sawimso Tayeng

Age: 57

Occupation :

Address:S/o Lt. Tuku Tayeng

Permanent Resident of Rangan Village

P.O Hayuliang and P.S Khupa

Anjaw District

Arunachal Pradesh

VERSUS

The State of AP and 13 Ors

Age: 0

Occupation :

Address:Represented by the Chief Secretary

Govt. of Arunachal Pradesh

Itanagar cum Chairman

Departmental Promotion Committee held on 31/10/2019

2:The Commissioner/Secretary
Age: 0
Occupation :
Address:Hydro Power Development Department
Govt. of Arunachal Pradesh
Civil Secretariat
Itanagar
A.P

3:Haniya Nabam Hina
Age: 37
Occupation :
Address:Son of Shri Tatik Nabam Hina
presently posted Assistant Engineer(Civil)
Seppa Division
East Siang District
Arunachal Pradesh.

4:Migo Basar
Age: 40
Occupation :
Address:Son of Tomi Basar
presently posted at the office of the CE (Monitoring) DHPD
Itanagar
Papum Pare District
Arunachal Pradesh.

5:Jumdo Kena
Age: 44
Occupation :
Address:Son of Late Tajum Kena
presently posted at the office of the CE (Monitoring) DHPD
Itanagar
Papum Pare District
Arunachal Pradesh.

6:Hukkar Taipodia
Age: 37
Occupation :
Address:Son of Late Mihuk Taipodia
presently posted at the office of the Assistant Engineer
Tirbin Sub Division
Basar
Lepa Rada District
Arunachal Pradesh.

7:Dojum Lollen
Age: 42
Occupation :
Address:Son of Kido Lollen
presently posted as Assistant Engineer (Civil) Geku Sub Division
Geku
Upper Siang District
Arunachal Pradesh.

8:Nabam Titu
Age: 37
Occupation :
Address:Son of Nabam Tanang
presently posted at the office of the Executive Engineer NERIST
Papum Pare District
Arunachal Pradesh.

9:Gyati Tani
Age: 39
Occupation :
Address:Son of Gyati Taji
presently posted at the office of the Chief Engineer
P and D
DHPD
Itanagar
Papum Pare District
Arunachal Pradesh.

10:Rajen Mudang
Age: 39
Occupation :
Address:Son of Mudang Ranka
presently posted as Assistant Engineer (Civil)
Palin Sub-Division
Kra Daadi District
Arunachal Pradesh.

11:Dollo Pura
Age: 44
Occupation :
Address:Son of Pura Tama
C/o the Commissioner/ Secretary
Hydro Power Development
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

12:Jobom Bam
Age: 44
Occupation :
Address:Son of Tope Bam
C/o the Commissioner/ Secretary
Hydro Power Development
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

13:Donya Lollen
Age: 42
Occupation :
Address:Son of Late Bindo Lollen
C/o the Commissioner/ Secretary
Hydro Power Development
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

14:Oni Ejing
Age: 42
Occupation :
Address:C/o the Commissioner/ Secretary
Hydro Power Development
Govt of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

Advocate for : Nikita Danggen
Advocate for : GA (AP) appearing for The State of AP and 13 Ors: Advocate ,

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14, respectively.

WP(C)/459/2022

Darmar Ete and Anr.

Age: 46

Occupation :

Address:S/o Late Hendar Ete

Permanent Resident of Village Darka

PO/PS Aalo

West Siang District

Arunachal Pradesh.
2: Gola Ravi
Age: 58
Occupation :
Address:S/o Late Gola Krishnaiah

Presently serving as ASW under Chief Engineer (WZ) Jalvidyut Bhawan
Itanagar.
Phone No. 936299087
VERSUS

THE STATE OF AP and 2 Ors.
Age: 0
Occupation :
Address:Represented by the Chief Secretary
Govt. of Arunachal Pradesh
Itanagar cum Chairman
Departmental Promotion Committee held on 31.10.2019
2:The Commissioner/Secretary
Age: 0
Occupation :
Address:(DHP and D) Govt. of Arunachal Pradesh
Itanagar.

3:Dollo Pura
Age: 0
Occupation :
Address:Presently serving as AE
Ziro Division
DPPHD
Lower Subansiri District
Arunachal Pradesh.

Advocate for : Rintu Saikia
Advocate for : GA (AP) appearing for THE STATE OF AP and 2 Ors.: Advocate ,

, appearing for 2,

3, respectively.

WP(C)/284/2025

Jumdo Kena and 7 Ors
Age: 44
Occupation :
Address:Son of Shri Late Tajum Kena

presently serving as Assistant Engineer(Civil) in the Office of Chief Engineer
(Monitoring)

Department of Hydro Power and Development

Itanagar

PO and PS Itanagar

Papum Pare District

Arunachal Pradesh.

2: Haniya Nabab Hina

Age: 37

Occupation :

Address:Son of Shri Tatik Nabam Hina

presently posted Assistant Engineer (Civil)

Seppa Division

East Kameng District

Arunachal Pradesh.

3: Nabam Titu

Age: 37

Occupation :

Address:Son of Nabam Tanang

presently posted at the office of the Executive Engineer NERIST

Papum Pare District

Arunachal Pradesh.

4: Hukkar Taipodia

Age: 37

Occupation :

Address:Son of Late Mihuk Taipodia

presently posted Assistant Engineer

Tirbin Sub Division

Basar

Leparada District

Arunachal Pradesh.

5: Migo Basar

Age: 40

Occupation :

Address:Son of Tomi Basar

presently posted at the Office of Chief Engineer (Monitoring) Department of Hydro
Power Development

Itanagar

Papum Pare District

Arunachal Pradesh.

6: Gyati Tani

Age: 39

Occupation :

Address:Son of Gyati Taji

presently posted at the Office of Chief Engineer
P and D
Department of Hydro Power Development
Itanagar
Papum Pare District
Arunachal Pradesh.

7: Dojum Lollen
Age: 42
Occupation :
Address: Son of Kido Lollen
presently posted Assistant Engineer (Civil)
Geku Sub Division
Geku
Upper Siang District
Arunachal Pradesh.

8: Rajen Mudang
Age: 39
Occupation :
Address: Son of Mudang Ranka
presently posted Assistant Engineer (Civil)
Palin Sub Division
Basar
Kra Daadi District
Arunachal Pradesh.
VERSUS

The State of AP and 7 Ors
Age: 0
Occupation :
Address: represented by the Commissioner
Hydro Power Development
Govt of Arunachal Pradesh
Itanagar.

2: The Commissioner
Age: 0

Occupation :
Address: Hydro Power Development
Govt of Arunachal Pradesh
Itanagar.

3: The Secretary
Age: 0
Occupation :
Address: Department of Hydro Power Development
Govt of Arunachal Pradesh
Itanagar.

4:The Under Secretary

Age: 0

Occupation :

Address:Department of Hydro Power Development

Govt of Arunachal Pradesh

Itanagar.

5:The 3 member Committee

Age: 0

Occupation :

Address:constituted by the Commissioner (Hydro Power Development) Govt of Arunachal Pradesh vide order dated 30.05.2025 issued on 03.06.2025 under the Chairmanship of Chief Engineer

Western Zone

Department of Hydro Power Development

Govt of Arunachal Pradesh

Itanagar.

6:Tommin Ete

Age: 52

Occupation :

Address:Son of Late T Ete

permanent resident of Vivek Vihar

Itanagar

PO and PS Itanagar

Papum Pare District

Arunachal Pradesh.

7:Vijay Passing

Age: 53

Occupation :

Address:Son of Ano Passing

permanent resident of Parbuk Village

PO and PS Roing

Lower Dibang Valley District

Arunachal Pradesh.

8:Sawinso Tayeng

Age: 52

Occupation :

Address:Son of Late Tuku Tayeng

presently permanent resident of Rangan Village

PO Hayuliang

PS Khupa

Anjaw District

Arunachal Pradesh.

Advocate for : Dicky Panging
Advocate for : GA (AP) appearing for The State of AP and 7 Ors: Advocate ,

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, appearing for 2,

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- B e f o r e -

Hon'ble MR. JUSTICE sanjay kumar medhi

Date on which judgment is : 03.02.2026

Reserved.

Date of pronouncement of : 09.02.2026.

Judgment.

Whether the pronouncement : NA.

**is of the operative part of the
judgment?**

**Whether the full judgment : Yes.
has been pronounced?**

JUDGMENT AND ORDER

All these four writ petitions and interlocutory applications being connected, the same have been heard together and are disposed of by this common judgment and order.

2. Before going into the issues which have arisen for consideration, it would be necessary to briefly state the basic facts of the cases. Suffice it to mention that the dispute is with regard to the seniority and consequential benefits between the promotees and the direct recruits in the Department of Hydro Power Development. Though the facts are common and overlapping, for the sake of convenience, the facts of each of the writ petitions, along with the submissions made are stated separately.

3. I have heard Shri K.N. Choudhury, learned Senior Counsel assisted by Ms N. Danggen, learned counsel for the applicants/petitioners in I.A.(C) No.217(AP)/2025; I.A.(C) No.218(AP)/2025 WP(C) No.14(AP)/2022 and WP(C) No.295(AP)/2024; Shri D. Panging, learned counsel for the petitioners in WP(C) No.284(AP)/2025; and Shri R. Saikia, learned counsel for the petitioners/applicant in WP(C) No. 459(AP)/2022 and IA(C) No.207(AP)/2025. Also heard Shri R. H. Nabam, learned Additional Advocate General for the State respondents; Shri D. Mozumdar, learned Senior Counsel assisted by Shri B. Kaushik, learned counsel for the respondent Nos.11 to 14 in WP(C)

No.14(AP)/2022 and for the respondent Nos. 2 to 5 in WP(C) No.295(AP)/2024 and Mr. D. Panging, learned counsel for the respondent Nos.3 to 10 in both the WP(C) No.14(AP)/2022 and WP(C) No.495(AP)/2022.

WP(C)Nos. 14 of 2022 and 295 of 2024.

4. There are three petitioners who are common in these two cases. The petitioner no. 1 was appointed as a Junior Engineer in the erstwhile Power Department on 24.11.1997, whereas petitioner nos. 2 and 3 were appointed as Junior Engineers on 17.12.1997. The erstwhile Power Department was subsequently bifurcated and the Department of Hydro Power Development came into being. It is also not in dispute that there is a set of Rules, namely, "*Recruitment to the Posts of Assistant Engineer Rules, 2005*". The Schedule to the Rules provides the mode of induction into the services, which can be either by direct recruitment or by promotion. Promotion can be made from amongst the Junior Engineers who have served for a particular length of time, depending upon whether they are Degree holders or Diploma holders and who have qualified in an accounting examination. The petitioners claim to have attained such eligibility in December 2002. The petitioners were accordingly allowed to officiate as Assistant Engineers in the Department in the year 2005 and 2007. Thereafter, vide an order dated 04.02.2009, the petitioners were given the pay scale of Assistant Engineer. The private respondents are direct recruits to the post of Assistant Engineer, appointed in the years, 2009 and 2012.

5. As the cases of the petitioners for regular promotion was not considered, the petitioners had earlier filed two writ petitions, WP(C) No. 574 of 2016 and WP(C) No. 26 of 2016, with a prayer to constitute a Departmental Promotion Committee (hereinafter referred to as "DPC"). The said writ petitions were

disposed of vide an order dated 16.01.2017, pursuant to which a DPC was convened and on 31.10.2019, the petitioners were given substantive promotion to the post of Assistant Engineer. The petitioners submitted representations seeking grant of retrospective effect to their promotions. Consequently, vide an order dated 19.05.2020, a Sub-Committee was constituted to consider the representations, which held its meeting on 23.06.2020. The Committee was of the opinion that the representations submitted by the promotees and the direct recruits were required to be considered and the matter was accordingly referred to the Administrative Reforms Committee.

6. The grievance of the petitioners is with regard to the non-grant of retrospective effect to their promotions from at least the year 2009, in which case they would be treated as senior to the private respondents who were subsequently appointed as Assistant Engineers by direct recruitment. The grievance is also against the decision to treat the petitioners as members of the cadre of Assistant Engineer only with effect from 31.10.2019.

7. Shri K. N. Choudhury, learned senior counsel for the petitioners has submitted that from the year 2002, the petitioners became eligible for promotion to the post of Assistant Engineer in terms of the Rules, both in respect of length of service as well as educational qualification. However, no DPC was conducted and in the meantime, the petitioners were allowed to officiate as Assistant Engineers in the years 2005 and 2007 and subsequently, on 04.02.2009, they were also given the pay scale of Assistant Engineer. He has submitted that the petitioners cannot be faulted or blamed for not holding of the DPC and therefore, they cannot be made to suffer. He has further submitted that the seniority list subsequently published, whereby the petitioners have

been shown to be junior to the private respondents, is liable to be interfered with and the seniority is required to be recast. He has also submitted that during the pendency of the present writ petitions, a Committee was constituted on 30.05.2025 for re-examining the issue and the numerous representations. However, the same is the subject matter of challenge in a connected writ petition, being WP(C) No. 284 of 2025 instituted by certain direct recruits. He has submitted that the said writ petition was instituted on a fallacious notion and without disclosure of all relevant facts. He has submitted that the challenge in WP(C) No. 284 of 2025 was on the ground of alleged violation of the principles laid down by the Hon'ble Division Bench of this Court in *Akaddas Ali vs. State of Assam and Others.*, reported in *2014 (4) GLT 55*, wherein it was laid down that when the Court is in seisin of a matter, the administrative authority should not act on the same. He submits that the interim order dated 27.06.2025 was, in fact, based on the principles laid down in *Akaddas Ali*.

8. The learned senior counsel submits that the facts and circumstances of the case of *Akaddas Ali (supra)* are completely different and therefore, the said principles are not applicable in the present case. He has also drawn the attention of this Court to the order dated 19.01.2022 passed in WP(C) No. 14 of 2022, wherein an observation was made that the pendency of the writ petition shall not be a bar to re-consideration of the representations submitted on the issue of seniority and this aspect was not brought to the notice of the Court.

9. Accordingly, Shri Choudhury, learned senior counsel submits that a direction be issued to reckon the petitioners as senior to the private respondents or, in the alternative, to remit the matter to the Administrative Department to take a final decision as per the order dated 30.05.2025. He has submitted that

there is no bar in law for the administration to review an earlier decision.

10. In support of his submissions, Shri Choudhury, the learned senior counsel has drawn the attention of this Court to the following case laws:

- (i) *Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others reported in (1990) 2 SCC 715*
- (ii) *State of West Bengal and Others Vs. Aghore Nath Dey reported in (1993) 3 SCC 371*
- (iii) *N. K. Chouhan and Others Vs. State of Gujarat and Others reported in (1977) 1 SCC 308*
- (iv) *Radha Mohan Malakar and Others Vs. Usha Ranjan Bhattacharjee and Others reported in (2009) 14 SCC 619*
- (v) *Union of India and Others Vs. N. R. Banerjee and Others reported in (1997) 9 SCC 287*
- (vi) *R. R. Verma and Others Vs. Union of India and Others reported in (1980) 3 SCC 402*
- (vii) *B. S. Mathur and Another Vs. Union of India and Others reported in (2008) 10 SCC 271*

11. The case of *Direct Recruit* (supra) has been cited wherein, a Constitution Bench of the Hon'ble Supreme Court has laid down the principles to be followed for determining the inter-se seniority between direct recruits and promotees. For

ready reference, the relevant observations are extracted hereinbelow:

“44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure [laid down by](#) the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) ...”

12. The case of *Aghor Nath Dey* (supra) has been cited so as to bring home the explanation/clarification given on the principles laid down in the Direct Recruit case (supra). For ready reference, the relevant observations of the Hon’ble Supreme Court are extracted hereinbelow:

“21. We shall now deal with conclusions (A) and (B) of the Constitution Bench in the [Maharashtra Engineers'](#) case, quoted above.

...

25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements [laid down by](#) the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial

appointment is not made by following the procedure laid down by the 'rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

13. In the case of *N. R. Banerjee* (supra) the aspect of preparation of a yearly

panel for the purpose of promotion has been held to be mandatory. It is submitted that the petitioners cannot be blamed for not conducting a DPC in spite of they being eligible in the year 2002 itself. The relevant observations of the Hon'ble Supreme Court made in the aforesaid case read as follows:

“12. Considered from that perspective, the question arises whether the view taken by the Tribunal is justified in law. It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In Shankarasan Dash v. Union of India [(1991) 2 SCR 567], the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up all or any of the vacancies even though the State acts in arbitrary manner. In Babita Prasad v. State of Bihar, it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In Union Territory of Chandigarh v. Dilbagh Singh, it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In State of Bihar v. Secretariat Assistant Successful Examinees Union 1986, it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to

selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules extracted hereinbefore, it is seen that the exercise of preparation of the panels is undertaken well in advance to fill up the clear vacancies of anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith. In [Nagar Mahapalika v. Vinod Kumar Srivastava](#), this Court had pointed out with respect to the prescription of the limitation of one year of the waiting list thus.

"The reason underlying the limitation of the period of list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the post in the succeeding year and being selected for appointment."

14. The Case of *R. R. Verma* (supra) has been cited to support the contention that there can be no restriction on the part of the Government to review its decision.

15. The case *B. S. Mathur* (supra) has been cited to bring home the contention that the safest way to determine the seniority is the aspect of continuous length of service. The Hon'ble Supreme Court in the said case has laid down the follows:

"40. Perusal of the seniority list drawn by application of principle of rota-quota as [laid down in](#) Rule 8(2) read with Rule 7 of DHJS Rules shows that in case the principle of rota-quota is followed, then it would cause a serious injustice to the

promotee officers inasmuch as, the direct recruits who have not yet entered the service would rank senior to the promotee officers promoted in their quota way back on 16.8.2000. If this is allowed to happen, this would not only be unreasonable but create a great heart-burning amongst the officers appointed from the two sources. Hence, in our view, the principle of rota-quota contained in the statutory Rule 8 (2) read with Rule 7 of DHJS Rules, does not properly address the problem of resolving inter se seniority dispute between the direct recruits and the promotee officers.

...

52. As observed earlier, perusal of the seniority list prepared on the basis of the principle of "continuous length of service" clearly demonstrates that in case the seniority of the officers of DHJS is fixed by reference to their date of appointment, then nobody would suffer any injustice. Each and every officer would get due weightage of the service rendered by him or her in the cadre of DHJS. If inter se seniority is finally decided by applying the principle of "continuous length of service", it may bring an end to litigation between the officers of the two groups. Therefore, the principle of "continuous length of service" should be applied for determining the inter se seniority of the officers of Delhi Higher Judicial Service appointed up to the year 2006. In case of officers appointed on the same date, whether direct appointees or promotees, the seniority should be fixed on the principles as stated in O.M. dated 3.7.1986 since it cannot be determined on the basis of length of service alone in case of appointment from two different sources on the same date."

WP(C) 259 of 2022

16. There are two petitioners in this case. However, this Court has been informed that one of them has retired. These two petitioners are also the applicants in IA(C) No. 207 of 2025 filed in WP(C) No. 284 of 2025 for vacation of the interim order. The petitioners, who are Degree holders, were appointed

as Junior Engineers on 24.11.1997 and were allowed to officiate as Assistant Engineers on 02.07.2007. Subsequently, vide an order dated 04.02.2009, the scale of pay of Assistant Engineers was also given to the petitioners. As the aspect of regularization was not considered, the petitioners had earlier filed WP(C) No. 574 of 2016, in which this Court passed an order dated 16.01.2017 directing the authority to identify the vacancy position under the promotion quota and to hold the DPC. Accordingly, a letter was issued by the Committee on 11.04.2018 along with a report, wherein vacancies were identified for the year 2008 and a recommendation was made for regularization of the services with effect from 15.09.2008.

17. Shri R. Saikia, learned counsel for the petitioners, has submitted that in the impugned minutes of the meeting dated 31.10.2019, the Committee report dated 11.04.2018 has been ignored and the impugned direction has been issued recommending seniority with effect from 31.10.2019. He has also drawn the attention of this Court to an order dated 29.05.2020 to consider the seniority of the petitioners as per the Sub-Committee's recommendation. However, a seniority list was published on 29.07.2022, whereby the seniority of the petitioners has been ignored. He has, however, drawn the attention of this Court to the observations appearing in the impugned list itself that the Government may further consider the matter. He has also informed this Court that in the present petition, an interim order was passed on 24.11.2022, wherein it was observed that any promotions made shall be subject to the outcome of the writ petition and that there would be no bar to revisit the seniority position.

18. Shri Saikia, learned counsel, has also referred to the affidavit filed by the State on 28.03.2023, wherein it has been stated that the stand of the State has

been taken by relying upon "Swamy's Handbook". He submits that such an approach is apparently fallacious and all the principles laid down by the Hon'ble Supreme Court on the subject have been ignored.

19. He has further submitted that his clients have also filed IA(C) No. 207 of 2025 in WP(C) No. 284 of 2025 for vacating the interim order, which, according to him, was obtained by suppression of material facts. He has specifically pointed out that the petitioners in WP(C) No. 284 of 2025 were also parties to WP(C) No. 14 of 2022, in which there was a clear order of this Court dated 19.01.2022 that pendency of the writ petition shall not be a bar to reconsideration of the matter by the State respondents and this important and relevant fact was suppressed.

20. Shri Saikia, learned counsel has also relied upon the case of *P. Rammohan Rao v. K. Srinivas and Other*, reported in (2025) 4 SCC 127, which follows the principles laid down in the case of *Direct Recruit Class II* (supra). He has further submitted that he adopts and endorses the contentions advanced by Shri K. N. Choudhury, learned Senior Counsel.

WP(C) 284 of 2025

21. The petitioners in the present writ petition are respondent Nos. 3–10 in WP(C) Nos. 14 of 2022 and 459 of 2022, and respondent Nos. 6–13 in WP(C) No. 295 of 2024. The petitioners, 8 in numbers, are direct recruits to the post of Assistant Engineer of the 2012 batch.

22. Shri Panging, learned counsel for the petitioners in this case, has submitted that in the year 2004 the Department of Hydro Power Development was

bifurcated from the erstwhile Power Department and the cadre strength of Assistant Engineer was 20. However, at that stage, all the aforesaid posts were filled on an officiating basis by promotion from the consolidated Department. By drawing the attention of this Court to the vacancy position which has been given in a tabular form in the affidavit-in-opposition filed in WP(C) No. 14 of 2022, he has submitted that there were no vacancies at all in the post of Assistant Engineer. As a corollary, he has submitted that non-holding of the DPC would be inconsequential, as there were no vacancies at all. He has reiterated that the aforesaid position by referring to the Government affidavits filed in WP(C) Nos. 14 of 2022, 459 of 2022, and 295 of 2024. He further submits that, in that context, there was no occasion to issue the notification dated 30.05.2025, and accordingly, the present challenge has been instituted against the said notification.

23. Shri D. Mazumdar, learned senior counsel assisted by Shri B. Kaushik, learned counsel, has appeared for the respondent Nos. 11-14 in WP(C) No. 14 of 2022 and respondent Nos. 2–5 in WP(C) No. 295 of 2022. He has opposed both the writ petitions and has submitted that the proposition laid down at Serial No. (B) in the case of *Direct Recruits* (supra) is not applicable in the instant case inasmuch as the pre-condition of there being vacancies is not fulfilled. He has submitted that even in the case of *Aghore Nath* (supra), the Hon'ble Supreme Court has clarified the requirement of existing vacancies so as to give benefits to promotees. He has further submitted that in the instant case, the petitioners were given officiating appointments in the quota of the direct recruits and, therefore, are not entitled to seniority. He has submitted that petitioner no. 1 was promoted as a stopgap arrangement on 10.08.2005. Further, in the subsequent orders of promotion dated 29.08.2007 and

04.02.2009, a condition was imposed that such appointments were made only on exigency and would not count towards seniority.

24. By referring to the affidavit-in-opposition filed in WP(C) No. 295 of 2024, Shri Mazumdar, the learned senior counsel, has submitted that the vacancy position has been disclosed and that, as on 2004, all 20 posts in the cadre of Assistant Engineers were filled up from the promotion quota. By drawing the attention of this Court to the list of officers who are 20 in numbers, he has submitted that two officers at Serial Nos. 19 and 20 were promoted in a DPC held on 24.07.2012, and these two officers had been officiating in the post of Assistant Engineer since 2005. Both the officers are senior to the petitioners and their seniority was given retrospective effect, which was the subject matter of challenge in WP(C) No. 66 of 2013 filed by the Direct Recruit batch of 2006. The said writ petition was disposed of by this Court. However, a writ appeal being WA No. 11 of 2021 has been filed, in which an interim order was passed on 29.11.2021, which is operating and the writ appeal is pending. He has submitted that the present petitioners were not even considered in the DPC held in 2012 due to lack of vacancies and two persons senior to the petitioners were considered and promoted, which is the subject matter in WA No. 11 of 2021.

25. By referring to the affidavit-in-opposition filed in WP(C) No. 14 of 2022, Shri Mazumdar, the learned senior counsel, has drawn the attention of this Court to a judgment dated 17.01.2006 passed in WP(C) No. 543 of 2005. In the said judgment, the grievance have been observed that more than 50% was reserved for direct recruits. However, the version of the Government was also taken into account that there were no vacancies. He has categorically submitted that while the respondents were appointed as Assistant Engineers on 24.08.2009, the

petitioners were appointed on 31.10.2019 and accordingly, the claim of the petitioner are not maintainable.

26. Shri Mazumdar, the learned senior counsel, has also referred to IA(C) No. 218 of 2025 filed in WP(C) No. 294 of 2024, in which an interim order was passed by this Court on 31.07.2024. However, on the ground of suppression of material facts pertaining to the DPC held on 24.07.2012, this Court, vide order dated 18.09.2024 had vacated the interim order. He has also submitted that on 20.11.2024, two of the applicants were promoted and that there are no other vacancies. He has submitted that without the petitioners being adjudged to be holding substantive posts of Assistant Engineer as on 2009, the aspect of seniority would not arise at all. To buttress his arguments, Shri Mazumdar has taken the aid of the judgment of the Hon'ble Supreme Court reported in (1977) 3 SCC 399 [*S.B. Patwardhan vs. State of Maharashtra*] and has relied upon the following observations:

“39. If officiating Deputy Engineers belong to Class II cadre as much as direct recruits do and if the quota system cannot operate upon their respective confirmation in that cadre, is there any valid basis for applying different standards to the members of the two groups for determining their seniority? Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. And yet clause (iii) of rule 8 provides that probationers recruited during any year shall in a bunch be treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation, say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till

then. This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefit of their long and valuable experience. If there was some intelligible ground for this differentiation bearing nexus with efficiency in public services, it might perhaps have been possible to sustain such a classification. It is interesting that time and again the State Governments themselves found it difficult to justify the hostile treatment accorded to the promotees. In various affidavits filed on their behalf, entirely contradictory contentions were taken, sometimes in favour of the promotees and sometimes in favour of direct recruits. Instead of adopting an intelligible differentia, Rule 8(iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government."

27. Shri R. H. Nabam, learned Additional Advocate General, Arunachal Pradesh, has submitted that the contention of the petitioners that DPCs should have been held is fallacious and unsustainable inasmuch as to hold a DPC, there must be clear-cut vacancies. Such a DPC was held in 2012 for 21 nos. of vacancies, however, the petitioners did not fall within the zone of consideration. He submits that the grant of pay scales of the post of Assistant Engineer to the petitioners

in 2009 cannot be a basis for claiming seniority, as an employee must be borne in the cadre permanently to claim seniority.

28. On behalf of the petitioners in WP(C) Nos. 14 of 2022 and 295 of 2024, Ms. N. Danggen, learned counsel, has replied to the counterarguments made on behalf of the respondents. She has submitted that there are serious disputes with the proposition that there were no vacancies. She has submitted that the vacancy position has been taken as a defence by the respondents by relying upon an annexure containing data in tabular form, which, however, does not bear any signature. She has also disputed the contents of the said table. She has also hastened to add that as per the replies dated 20.11.2022 and 30.06.2022 to an RTI applications, vacancies were stated to be available.

29. The rival submissions of the learned counsel for the rival parties have been duly considered and the materials placed before this Court have been carefully perused.

30. While the mainstay of the claim of the petitioners in WP(C) Nos. 14 of 2022, 259 of 2022 and 295 of 2024 is their officiating arrangement from the years 2005 and 2007, including the order dated 04.02.2009 whereby the petitioners were also given the scale of pay of Assistant Engineers, the defence taken by the respondents is that such arrangements would not confer seniority as there were no vacancies in the promotion quota. It is the further defence that vacancies in the promotion quota arose much later and accordingly, the petitioners were given substantive appointments on promotion vide order dated 31.10.2019. Reliance has also been placed by the respondents on the DPC held in the year 2012, wherein two persons senior to the petitioners were promoted

against the existing vacancies in the promotion quota.

31. The aspect of lack of vacancy has been highlighted in the affidavits filed in the writ petitions, wherein data including the vacancy position has been given in the form of a table in an annexure. A perusal of the same would show that a compilation has been made regarding the cadre strength at various periods and the mode of induction, either by way of promotion or direct recruitment. At this stage, it would be necessary to note that the Department of Hydro Power Development was bifurcated from the original Power Department and at the initial stage, all posts of Assistant Engineer were filled through deputation by promotees on an officiating basis.

32. The annexure containing the table on vacancies which has been enclosed to the affidavit, however, does not bear any signature and this issue has been highlighted by the petitioners with the contention that such data are not reliable. Though this Court may not term the data to be unauthentic, in the absence of the signature of the appropriate authority, it is difficult for this Court to arrive at a definite conclusion on the matter, more so when the original records were not produced on behalf of the State.

33. At this stage, certain important aspects are required to be taken into account. The seniority list was published on 29.07.2022, which is the subject matter of challenge in WP(C) No. 459 of 2022 and other connected matters. There is, however, an observation made in the list itself, which reads as follows:

“the seniority position of Shri Yimi Angu, AE (now officiating EE) as indicated at Sl.12 shall vary subject to the outcome of the Hon’ble

High Court Itanagar Permanent Bench, Naharlagun in case no. WA 11/2021 filed by Shri Yimi Angu -vs- Shri Obi Dai and 14 others and as regards Sl.No. 41, 42, 44, 45 and 47 will remain same unless the competent authority of the Govt. considers their request for promotion with retrospective of officiating promotion or any order comes from the Hon'ble High Court."

34. What is more striking is that the Government, on its own, has taken a decision on 30.05.2025 to have the various representations considered by a committee constituted for the said purpose. For ready reference, the relevant extracts of the aforesaid order are quoted hereinbelow:

*"No. SHPD-11018/4/2024 (E-209672)
Government of Arunachal Pradesh
Department of Hydro Power Development
A P Civil Secretariat::Itanagar
Block No3. 5th Floor Room no.1*

Dated Itanagar, the 30h May, 2025

ORDER

A Committee is hereby constituted to examine the joint representation submitted by Shri Vijay Passing, Shri Tomin Ete, and Shri Swaimso Tayeng concerning the Departmental Promotion Committee (DPC) held for promotion from the post of Junior Engineer (Civil) to Assistant Engineer (Civil), dated 30/10/2019, and the fixation of seniority in compliance with the Addendum Order No. PWRS/E-1437/06/Pt./2012 dated 01.06.2020.

The Committee shall examine the issues raised in the joint representations as contained in the Sub-Committee Reports dated 23rd June 2020 and 29th April 2025, and submit its recommendations accordingly.

The composition of the Committee is as follows:

- 1. Er. Jummar Kamdak**, Chief Engineer (WZ) - Chairman
- 2. Er. Moto Basar**, Chief Engineer (P&D) - Member

3. Shri K. M. Pakman, Under Secretary, DHPD - Member Secretary

*The Committee shall examine the matter in detail and submit a comprehensive report within **one (1) month** from the date of issue of this order.*

This order is issued with the approval of the competent authority.

Encl:- all relevant documents as stated above.

Sd/-

(Sonam Chombay) IRS

Commissioner (HPD)

Govt. of Arunachal Pradesh

Itanagar

M/No. SHPD-11018/4/2024 (E-209672)/432-38 Dated Itanagar,

the 3rd June `2025”

35. The aforesaid communication dated 30.05.2025 is the subject matter of challenge in WP(C) No. 284 of 2025. This Court, however, is of the view that there cannot be any restraint upon the Government to re-examine a contentious issue which has caused heartburn to the officers/employees of a Department. Ultimately, it is the Government which is required to resolve all such anomalies or disputes, which are, however, subject to judicial review.

36. In this connection, this Court finds force in the contention advanced by Shri Choudhury, the learned senior counsel, who has relied upon the case of *R. R. Verma* (supra). In the said case, the Hon’ble Supreme Court has laid down as follows:

“5. The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the Government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission : [Patel Narshi Thakershi v. PradyumansinghjiArjunsinghji](#); [D. N. Roy v. State of Bihar](#) and [State of Assam v. J. N. Roy Biswas](#). All the cases cited by Shri Garg are cases where the Government was exercising quasi-judicial

powers vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free to alter policy or its decision in administrative matters. If they are to carry on their daily administration, they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. We see no force in this submission of the learned counsel. The appeal is, therefore, dismissed."

37. In view of the aforesaid facts and circumstances and the discussions made, while WP(C) No. 284 of 2025 is dismissed, the other writ petitions, namely, WP(C) Nos. 14 of 2022, 459 of 2022 and 295 of 2024 are disposed of by directing the Government in the Department of Hydro Power Development to conclude the exercise initiated vide the order dated 30.05.2025 by considering the representations of the officers/employees of the Department expeditiously and preferably within a period of 3 (three) months from the date of receipt of a certified copy of this order. To make the exercise a consolidated one, if any further representations are to be submitted by any aggrieved persons on the issue, liberty is granted to do so within a period of 10 (ten) days from today. It is needless to state that in the exercise to be conducted, the representationists shall be given an opportunity of hearing. After such consideration, the Department is required to pass a speaking order which is required to be

communicated to all the parties.

38. The interim orders operating in the writ petitions stand merged with this final order.

39. No order as to cost(s).

JUDGE

Comparing Assistant