

**IN THE HIGH COURT OF MANIPUR**  
**AT IMPHAL**  
**W.P. (C) No. 344 of 2020**

1. Dr. Thokchom Chhatrajit Singh, aged about 32 years, S/o Thokchom Tomba Singh, resident of Kwakeithel Thokchom Leikai, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
2. Dr. Rajkumar Kamaljit Singh, aged about 37 years, S/o Dr. Rajkumar Ranjit Singh, resident of Yaiskul Chingakham Leikai, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.
3. Loukrakpam Merin Singh, aged about 33 years, S/o Loukrakpam Brojendro Singh, resident of Chingamakha Chongtham Leikai, Singjamei, P.O. & P.S. Singjamei and District Imphal West, Manipur-795001.
4. Dr. Biraj Shougaijam, aged about 32 years, S/o Shougaijam Rajen Singh, resident of Thangmeiband Kabrabam Leikai, P.O. & P.S. Lamphel and District Imphal West, Manipur-795001.
5. Anand Jyoti Sanasam, aged about 20 years, S/o Sanasam Iboyaima Singh, resident of Thoubal Sabaltongba Awang Leikai, Thoubal, P.O. & P.S. Thoubal and District Thoubal, Manipur-795138.
6. Pinky Khundrakpam, aged about 31 years, D/o Khundrakpam Yaima Singh, resident of Sagolband Meino Leirak, P.O. & P.S. Imphal West and District Imphal West, Manipur -795001.
7. Rosy Kimneithem Haokip, aged about 28 years, D/o Zamkhokhai Haokip, resident of Spring Villa Phaipijang Spring Villa Langol Housing Complex, P.O. & P.S. Lamphel and District Imphal West, Manipur-795004.
8. Dr. Ningombam Swapana, aged about 41 years, D/o Ningombam Jitendra Singh, resident of Yaiskul Janmasthan, P.O. & P.S. Imphal and District Imphal West, Manipur-795001.

9. Thingbaijam Rajkumari Chanu, aged about 31 years, D/o Thingbaijam Khelemani Khuman, resident of Khabeisoi Sabal Leikai, P.O. Lamlong, P.S. Porompat and District Imphal East, Manipur-795010.

*... Petitioners*

**-Versus-**

1. The State of Manipur, represented by the Principal Secretary, Hr. and Tech. Education, Govt. of Manipur, Secretariat Building, Babupara, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.
2. Manipur Technical University, represented by its Registrar, Government Polytechnic Campus, Takyelpat, P.O. & P.S. Imphal, District Imphal West, Manipur-795004.
3. Lourembam Iboyaima Singh
4. Laishram Jimmy.
5. Kosygin Leishangthem.
6. Asem Nabadavis.
7. Tayenjam Jeneeta Devi.

*... Respondents*

**B E F O R E**

**HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the applicant	:: Shri B.P. Sahu, Senior Advocate
For the respondents	:: Shri A. Romenkumar, Advocate; Shri R.K. Banna, Advocate; Shri N. Zequeson, Advocate & Shri Th. Sukumar, Govt. Advocate.
Date of Hearing	:: <b>10-12-2020</b>
Date of Judgment & Order	:: <b>30-12-2020</b>

**JUDGMENT & ORDER**

[1] Heard Shri B.P. Sahu, learned Senior Advocate appearing for the petitioners; Shri A. Romenkumar, learned Advocate appearing for the respondent Nos. 4 to 7; Shri R.K. Banna, learned Advocate appearing for

the respondent No.3; Shri N. Zequeson, learned Advocate appearing for the respondent No. 2, Manipur Technical University and Shri Th. Sukumar, learned Government Advocate appearing for the State respondent.

**[2]** By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the relevant portion of the resolution of the Board of Management of Manipur Technical Education in its meeting held on 29-06-2020 and in particular, the agenda No.7 thereof.

**[3.1]** Facts and circumstances as narrated in the writ petition, are that the Manipur Technical University (hereinafter referred to as “**the MTU**”) issued various Notifications dated 20-06-2016; 12-07-2016 and 23-07-2016 for appointment of eligible candidates to various posts on contract basis. It is specifically stated therein that the appointments are, on short term basis, only for six months. Pursuant to the aforesaid Notifications, the interviews were held on different dates ie., 06-08-2016, 13-07-2016, 14-07-2016, 29-07-2016 and the results thereof were declared vide Notifications dated 06-07-2017, 15-07-2016 and 29-07-2016 issued by the Registrar, MTU. The respondent Nos. 3 to 7 were appointed to the posts of Assistant Professors in various subjects on contract basis pursuant to the said notifications.

**[3.2]** Thereafter, the MTU issued a Notification dated 23-05-2018 whereby applications were invited from amongst the eligible candidates for recruitment of both Teaching Faculties and Non-Teaching Staff on regular

basis in the MTU, pursuant to which all the petitioners submitted their applications and faced the interviews which were held on various dates. The petitioners along with other candidates were recommended for appointment to the posts of Assistant Professors in various subjects and thereafter, they were all appointed to their respective posts vide order dated 17-12-2018 and the appointment orders specifically mentioned that the petitioners were appointed on regular basis. The appointments were made with the concurrence of the Finance Department, Government of Manipur as well as with the approval of the Vice-Chancellor, MTU.

**[3.3]** On the dictation of the State Cabinet, the Board of Management, MTU passed a resolution in its meeting held on 29-06-2020 whereby it was resolved that the services of five Assistant Professors, the respondent Nos. 3 to 7 herein who were engaged on contract basis, would be regularized with effect from the date of their joining the service. The Board of Management, MTU consisted of seven members including the Registrar, MTU and various other officials/ authorities. Out of the seven persons appointed on contract basis, two of them had left their jobs and thus, only the respondent Nos. 3 to 7 are in the service as of now. The said Assistant Professors, the respondent Nos. 3 to 7 had joined the MTU in July, 2016 and they were appointed on contract basis pursuant to the Notifications issued by the MTU wherein it was clearly indicated that their appointments were on contract basis. On the other hand, the petitioners had been appointed on regular basis pursuant to the Notifications which clearly stipulated that their appointments would be on regular basis.

**[3.4]** Being aggrieved by the said portion of the resolution passed by the Board of Management, MTU and the consequential order dated 17-08-2020 issued by the MTU, the instant writ petition has been filed by the petitioners on the inter-alia grounds that it would be a grave miscarriage of justice and in gross violation of the law settled by the Hon'ble Supreme Court in a catena of decisions that the regularisation of temporary employees such as contract/ ad-hoc/ substitute etc. is illegal. The question of regularising them with retrospective effect did not arise and such regularisation with retrospective effect or from the date of their appointments on contract / ad-hoc basis, had been quashed and set aside by the Hon'ble Courts in several cases. The date of appointment on contract basis cannot be construed to be the date of regularisation under any provision of law in the country. If the date of regularization of the said Assistant Professors is done with effect from the date of their joining on contract basis, it will greatly affect the seniority of the petitioners who have been appointed on regular basis. The date of regularisation, if at all done, should be from the date of regular appointment and cannot be done with retrospective effect. Such an act of the respondents is in violation of the law settled by the Hon'ble Supreme Court and is illegal, unlawful, arbitrary, malafide, vindictive and capricious to the extent that it has deprived the petitioners of their Fundamental Rights guaranteed under the Constitution of India.

**[4.1]** An affidavit on behalf of the respondent Nos. 4 to 7 has been filed denying the averments made in the writ petition and in addition

thereto, it has been specifically denied that the respondent Nos. 3 to 7 were appointed in the posts of Assistant Professors in various subjects on short term contract basis because the expression “short term” is not found in their appointment orders. As per the AICTE norms as communicated by the Registrar, MTU dated 20-05-2017 to the Under Secretary, Hr. & Tech. Edn., Government of Manipur, 80% of the 9 posts created should be filled up on regular basis but contrary to this norm, the MTU appointed the respondent Nos. 3 to 7 on contract basis after following due process of law. They submitted a representation to the Vice-Chancellor, MTU on 22-01-2018 for their regularisation but without considering it, the MTU issued a Notification dated 23-05-2018 for appointment in various posts including the posts held by them. Having no alternative, the respondent Nos. 3 to 7 approached the Hon’ble High Court by way of a writ petition being WP(C) No.519 of 2018 which was disposed of on 20-09-2018 by this Court. As the MTU is owned and controlled by the State Government, the State Cabinet took a decision on 11-02-2020 in compliance with the order of this Court to regularise the contract appointments of the respondent Nos. 3 to 7 from the date of their joining the service and consequently, the Joint Secretary, Hr. & Tech. Edn., Government of Manipur conveyed the cabinet decision to the Registrar, MTU to issue a regularisation order. Accordingly, the Board of Management of the MTU resolved in its meeting held on 29-06-2020 for their regularisation. The proceeding of the Board of Management was a process of complying with and implementing the judgment and order dated 20-09-2018 and therefore, the petitioners have

no locus standi to question the process of implementation without challenging the judgment and order dated 20-09-2018. The petitioners have concealed the fact about the order dated 20-09-2018 being passed by this Court. As has been contended by the petitioners, they were not borne in the cadre of the MTU, when the judgment and order dated 20-09-2018 was delivered by this Court and therefore, they have no locus standi to file the present writ petition. While the regular appointments of the petitioners were made only on 17-12-2018, the appointments of the respondent Nos. 3 to 7 were made in the year 2016 by following due process of law. The petitioners are the Assistant Professors of some disciplines which are different from that of the respondents Nos. 3 to 7. The petitioners did not file any application for their impleadment as parties therein, although they were aware of the pendency of the said writ petition and moreover, the present writ petition has been filed after a lapse of more than two years which is barred by law of limitation/ latches. Even the review petition filed by the MTU on 02-11-2018 was dismissed on merit on 18-12-2018. The petitioners were appointed after the judgment and order being delivered by this Court and since they were not necessary parties, they have no locus standi to file the present writ petition. The Seniority is to be determined as per the procedure prescribed by law. Rule 12 is the rule for determining seniority of the concerned and particular department and since the petitioners belong to different departments, no inter-se seniority of the inter-departmental teachers can be made by the MTU.

**[4.2]** In the affidavit filed on behalf of the respondent No. 1 & 2, it has been stated that the respondent Nos. 3 to 7 were initially appointed as Assistant Professors on contract basis but in a writ petition filed by them, this Court, after relying upon the relevant judgments rendered by the Hon'ble Supreme Court and allowing it, held that the MTU should provide regular appointment from the date of their initial appointment. A review petition filed by the Vice-Chancellor and the Registrar, MTU was dismissed by this Court on 18-12-2018. In order to comply with the direction of this Court, a proposal was placed before the Cabinet which approved it in its meeting held on 11-02-2020 and the same was communicated to the Registrar, MTU by the Joint Secretary (Hr. Tech. Edn.), Government of Manipur vide its letter dated 27-06-2020. The Board of Management, MTU in its meeting held on 29-06-2020 passed a resolution advising the University to constitute a verification committee for regularising the services of the respondent Nos. 3 to 7 along with eleven Assistant professors serving on guest basis. Since the petitioners were not borne on the cadre, they were not impleaded as party respondents in the writ petition and therefore, the law laid down by the Hon'ble Supreme Court in Shivdeo Singh's case would have no application. The regularisation of the services of the respondent Nos. 3 to 7 was based on the basis of the judgment and order passed by this Court and the decision taken thereafter by the State Government. The judgment and order passed by this Court had not been challenged nor had the letter dated 27-06-2020 conveying the decision of the State Government been challenged by the petitioners



and therefore, in view of the decisions rendered by the Hon'ble Supreme Court in a catena of decisions that without challenging the order on the basis of which impugned order was issued, the challenge to the consequential order cannot be entertained at all. Since the selection process was undertaken by the MTU in accordance with the provisions of Article 16 of the Constitution of India as held by this Court, the order dated 17-08-2020 issued by the MTU in compliance with the direction of this Court did not suffer from any legal infirmity.

**[4.3]** In their rejoinder, it has been stated by the petitioners that the letter dated 20-05-2017 is a mere communication by the Registrar, MTU to the Under Secretary (Higher & Tech) Education, Government of Manipur and it does not have any relevance whatsoever with the admitted position of the appointment of the respondent Nos.3 to 7 on contract basis. The respondent Nos. 3 to 7 have completely ignored the conditions of their initial appointments which provide that they will not claim for regularisation by approaching the Court of law. The respondent Nos. 3 to 7 applied for appointment on regular basis but before the completion of the process, they chose to approach this Court with malafide intention to get an order in their favour. The petitioners were not made parties and they would be affected by the order passed in their writ petition and therefore, the instant writ petition is maintainable in terms of the decision rendered by the Hon'ble Supreme Court in **Shivdeo Singh & ors Vs. State of Punjab, AIR 1963 SC 1909**. The earlier order can be reviewed by the High Court under Article 226 of the Constitution at the instance of the persons whose rights

have been affected by the earlier order, when they were not made the parties therein.

[5] It has been submitted by Shri B.P.Sahu, learned Senior Advocate appearing for the petitioners that the portion of the resolution of the Board of Management, MTU passed in its meeting held on 29-06-2020 for regularisation of the services of the respondent Nos.3 to 7 was bad in law for the reason that the regularisation of contract services with effect from the date of initial appointment on contract basis was impermissible in law and accordingly, the subsequent order dated 17-08-2020 issued by the MTU was bad and liable to be quashed and set aside. Combating his submission, it has been submitted by Shri A. Romenkumar Singh, learned Advocate appearing for the respondent Nos. 4 to 7 that the resolution was passed by the Board of Management, MTU in terms of the policy decision taken by the State Cabinet for purpose of complying with this Court's order dated 20-09-2018 and therefore, there was nothing wrong in the resolution and the subsequent order dated 17-08-2020 issued by the MTU and moreover, the petitioners have no locus standi to question them because when the judgment and order dated 20-09-2018 was passed by this Court, they were not yet borne in the cadre of the Assistant professors nor did they challenge the judgment and order. In other words, since the petitioners were not in the service of the MTU, they did not have any business to interfere with the functioning of the Board of Management, MTU. It has further been submitted by him that the seniority is not a vested right. It is well settled position of law that the period of service rendered on

ad-hoc, contract, if made on the recommendation of duly constituted DPC, shall be counted for determining the seniority. Reliance has been placed by him in the decisions rendered in **Provodh Verma Vs. State of UP, AIR 1985 SC 167; Ran Janam Singh Vs. State of UP, AIR 1994 SC 1722; M. Satyanarayana Murthy Vs. Mandal Revenue, Officer cum Land Acquisition Officer, (1998) 7 SCC 445; State of Nagaland Vs. Toulvi Kibani, (2003) 8 SCC 671; Sahara India Real Estate Corporation Ltd. Vs. Security Exchange Board of India, (2013) 2 SCC 730; Akshay Kumar Singh Vs. State (NCT of Delhi), (2020) 3 SCC 431; B.K Pavithra & ors Vs. Union of India, 2020 (5) SCALE 783**. Shri R.K Banna, learned Advocate has adopted the arguments of Shri A. Romenkumar. In addition to what has been submitted by them, Shri Sukumar, learned Government Advocate appearing for the respondent No.1 submitted that without the judgment and order passed by this Court being challenged, the petitioners cannot question the actions taken on that basis or for that matter, they cannot question the actions taken by the MTU in compliance with it. Shri N. Jackson, learned Advocate appearing for the MTU has adopted the arguments of Shri Sukumar, learned Government Advocate. But justifying his submission, it has been submitted by the counsel appearing for the petitioners that this Court is empowered under Article 226 of the Constitution of India to review its order/ judgment, as it was passed in their absence, for which he has relied upon the decision of the Hon'ble Supreme rendered in **Shivdeo Singh Vs. State of Punjab, AIR 1963 SC 1909**. He has further relied upon the decisions rendered in **Pohla Singh**

**alias Pohla Ram by LRs & ors Vs. State of Punjab & ors, (2004) 6 SCC 126 and State of Uttar Pradesh & ors Vs. Ashok Kumar Srivastava & anr, (2014) 14 SCC 720.**

[6] The undisputed facts are that pursuant to the notifications issued by the MTU inviting applications for appointment to various posts on contract basis, the respondent Nos. 3 to 7 applied for them. The interviews were held on different dates and the results thereof were declared thereafter, on the basis of which the respondent Nos.3 to 7 were appointed as the Assistant Professors in various subjects on contract basis vide orders including the order dated 08-8-2016. At that time, the regular posts were available but without initiating a process of recruitment on regular basis, the process for appointment on contract basis was initiated by MTU. After the respondent Nos. 3 to 7 having served for about two years, they submitted a representation dated 22-01-2018 requesting for regularisation of their services. Instead of considering it, the MTU issued a Notification dated 23-05-2018 inviting applications for recruitment of both Teaching Faculties and Non-Teaching Staff on regular basis for various posts including the posts held by them, pursuant to which the petitioners and the respondent Nos. 3 to 7 submitted their applications. But the respondent Nos. 3 to 7 approached this Court by way of WP(C) No.519 of 2018 for their regularisation which was disposed of on 20-09-2018. On the recommendation of the Selection Committee, the petitioners were appointed to their respective posts vide order dated 17-12-2018 on regular basis. A review petition filed by the Vice-Chancellor and the Registrar,

MTU against the order dated 20-09-2018 was dismissed by this Court on 18-12-2018. Therefore, in order to comply with the direction of this Court, a proposal was placed before the Cabinet which approved it in its meeting held on 11-02-2020 and the same was communicated to the Registrar, MTU by the Joint Secretary (Hr. Tech. Edn.), Government of Manipur vide its letter dated 27-06-2020. The Board of Management, MTU in its meeting held on 29-06-2020 passed a resolution to the effect that the respondent Nos. 3 to 7 who were engaged on contract basis, would be regularized with effect from the date of their joining the services. The judgment and order dated 20-09-2018 passed by this Court had not been challenged nor had the letter dated 27-06-2020 conveying the decision of the State Government for regularisation, been challenged by the petitioners. In compliance with the direction of this Court, the MTU issued an order dated 17-08-2020 regularising the services of the respondent Nos. 3 to 7, the validity and correctness of which along with the resolution dated 29-06-2020 are under challenge in this writ petition.

**[7]** From the aforesaid facts, it is seen that by the time when WP(C) No.519 of 2018 was filed by the respondent Nos. 3 to 7 before this Court praying for their regularisation, the petitioners were not borne in the cadre of the Assistant Professors and therefore, they were not the necessary parties nor had any right accrued to them. There was no need of making them as party respondents therein. Since the MTU was a party, there was a possibility of the petitioners having had the knowledge about the pendency of the writ petition. They could have moved an application for

their impleadment, if they felt that they were necessary parties but they had chosen not to do so, because of which this Court disposed of the writ petition on 20-09-2018 directing that the respondent Nos. 3 to 7 be given regular appointments from the date of their initial appointments. During the course of hearing, it has been submitted by the learned counsel appearing for the petitioners that the petitioners are not aggrieved by the regularisation of the respondent Nos. 3 to 7 as the Assistant professors and their only grievance is that the regularisation of the respondent Nos. 3 to 7 had been illegally given retrospective effect from the date of initial appointments. From the pleadings of the parties and their submissions, two issues have emerged for consideration by this Court-one, whether the instant writ petition does merit consideration without challenging the State Government's decision communicated vide letter dated 27-06-2020 and the judgment and order dated 20-06-2018 passed by this Court because the resolution of the Board of Management, MTU was passed and the consequential order dated 17-08-2020 was issued for compliance with this Court's order and two, whether the judgment and order dated 20-09-2018 passed by this Court can be reviewed by this Court in the facts and circumstances of the present case and that too, at the instance of the petitioners.

**[8.1]** An issue relating to the maintainability of the writ petition has been raised by the counsels appearing for the private respondents and therefore, this Court proposes to consider it before going into the merit of the case. It has been submitted by Shri A. Romenkumar, the learned

counsel appearing for the respondent Nos. 3 to 7 that the petitioners have no locus standi to file the instant writ petition for the reason that at the time when the writ petition was filed by the respondent Nos. 3 to 7, the petitioners were not in the service of the MTU nor were they made the parties therein and that the actions taken by the State respondents towards the regularisation of the respondent Nos. 3 to 7 were only to comply with the this Court's judgment and order which had attained its finality. In **Ashok Singh & ors Vs. State of Uttar Pradesh & ors, (2018) 9 SCC 723**, the Hon'ble Supreme Court dismissed the appeal on the ground that since the impugned order had attained finality, its legality and correctness could not be examined and moreover, the appeal could not be considered at the hands of the appellants who were not parties either in the writ petition or the writ appeal. Therefore, without challenging the judgment and order dated 20-09-2018 before the appropriate forum, the subsequent actions taken towards its compliance by the State authorities cannot be questioned by the petitioners. It is thus seen that the instant writ petition is not maintainable at the hands of the petitioners who were not parties in the writ petition filed by the respondent Nos. 3 to 7 but since the learned counsels appearing for the parties have made their submissions on merit, this Court deems it appropriate to consider the writ petition on merit as well.

**[8.2]** As regards the first issue, it may be noted that the judgment and order dated 20-09-2018 was passed by this Court directing that the respondent Nos.3 to 7 be given regular appointments from the date of their

initial appointments and while passing it, this Court had taken into account certain vital points. The regular posts were available at the relevant time and as per AICTE norms, the process for regular appointment ought to have been initiated by the MTU but instead of doing that, the MTU for the reasons best known to it issued notifications for appointment on contract basis. The procedure as laid down in law including that of Article 16 of the Constitution of India, had been followed wherein the respondent Nos. 3 to 7 being eligible, did participate and they were appointed on the recommendation of the Selection Committee. In fact, the MTU being aggrieved by it, filed a review petition which was dismissed by this Court. There is no any material on record to show that any appeal had been preferred against the judgment and order dated 20-09-2018 before the appropriate forum with the result that it had attained its finality. Having no alternative with the MTU, a proposal was placed before the State Cabinet for taking a policy decision to comply with this Court's direction. After the proposal being approved by the State Cabinet, a letter dated 27-06-2020 was sent to the MTU conveying the approval, on the strength of which the resolution was passed by the Board of Management, MTU and the consequential order dated 17-08-2020 was issued by the MTU regularising the services of the respondent Nos. 3 to 7 from the date of their initial appointments. The basis of regularisation is undoubtedly the judgment and order dated 20-09-2018 passed by this Court which had attained its finality without the same being challenged by anyone before the appropriate forum. The letter dated 27-06-2020 which was sent to MTU by the Joint



Secretary (Hr. & Tech Edn.), Government of Manipur conveying the cabinet approval for regularisation of the services of the respondent Nos. 3 to 7 was also not challenged by the petitioners. Therefore, the submission of the learned counsels appearing for the respondents and in particular, the submission on behalf of the State respondents that without challenging the basis, the subsequent actions cannot be challenged, has some force and merit. The prayers in the writ petition are only to quash and set aside the portion of the resolution of the Board of Management, MTU as regards the agenda No.7 thereof and the consequential order dated 17-08-2020 issued by the MTU and as long as the judgment and order dated 20-09-2018 remains in operation, the subsequent actions cannot be interfered with by this Court for the reason that they have been taken by the State respondents to comply with the judgment and order of this Court. It is well settled that the order passed by the Courts including this Court, will have to be honoured and complied with by all concerned, failing which a constitutional crisis may arise and a chaos may be created in the society leading to disharmony and law and order problem. Therefore, if this Court interferes with the said portion of the resolution of the Board of Management, MTU and the consequential order dated 17-08-2020 issued by the MTU, the outcome thereof may tantamount to disobedience of this Court's order by the State respondents and this Court's judgment and order may be rendered redundant.

**[9]** So far as the second issue is concerned, it may be noted that the judgment and order dated 20-09-2018 was passed by this Court in

exercise of power conferred upon it by the provisions of Article 226 of the Constitution of India. If any person is aggrieved by it, the procedure to be followed by him/ her as prescribed in the High Court rules and the Constitution of India, is either to file a review petition before this Court or to prefer a intra-Court appeal namely a writ appeal before the Division Bench of this Court or to prefer a petition for special leave to appeal before the Hon'ble Supreme Court under Article 136 of the Constitution of India. Neither a review petition nor a writ appeal nor a petition for special leave to appeal appears to have been filed by the petitioners against the said judgment and order dated 20-09-2018. In other words, the legality and correctness of the judgment and order dated 20-09-2018 has not been challenged by the petitioners at all in accordance with the procedure prescribed in law. The instant writ petition has been filed by them questioning only the validity and correctness of the portion of the resolution of the Board of Management, MTU and the consequential order dated 17-08-2020 issued by the MTU. All that has been submitted vehemently by the counsel appearing for the petitioners, is that although a review petition has not been filed by the petitioners against the judgment and order dated 20-09-2018, this Court is empowered under the provisions of Article 226 of the Constitution of India to review its earlier order for the end of justice, for which he has heavily relied upon the decision rendered in **Shivedeo Singh** (supra) wherein certain lands in the village Bhaini Bangar were allotted to a number of displaced persons. The said village was declared later to be a "fauji" village. Thereafter, the lands allotted to the appellants who are 'non-

faujis”, appear to have been cancelled by the Director of Rehabilitation and being aggrieved by it, they filed a writ petition, in which only the Director of Rehabilitation was made a party, which was allowed by the High Court. The ‘faujis’ families filed a writ petition before the High Court for their impleadment as parties in the appellant’s writ petition and for rehearing the whole matter. The said writ petition was allowed and being aggrieved by it, the ‘non-faujis’, appellants therein preferred an appeal under the letters patent which was dismissed by the High Court. The appellants came up to the Hon’ble Supreme Court by way of special leave which was granted by it. However, the civil appeal was dismissed by the Hon’ble Supreme Court vide its decision, the relevant paragraph of which reads as under:

*“8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla’J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is*

*precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J.”*

The above decision has been referred to and reiterated in **Pohla Singh alias Pohla Ram by LRs** (supra) in the following observation:

*“18.1. In this petition Gurcharan Singh, son of Dhanna Singh was arrayed as respondent 4 and the judgment shows that the petition was contested only by the said respondent. If a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as a party in the writ petition, it is always open to him to ask for recall of the judgment which has been rendered without affording any opportunity of hearing to him. An identical question has been examined by a Constitution Bench in Shivdeo Singh v. State of Punjab. Here in a writ petition filed by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B, the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently, B filed a petition under Article 226 of the Constitution for impleading him as a party to A’s writ petition and rehearing the whole matter. The High Court allowed the writ petition. It was held by this Court that the second writ petition filed by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of B, who was not a party to the previous proceedings. It was further held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave or palpable errors*

*committed by it. In entertaining B's petition, the High Court thereby did what the principles of natural justice required it to do"*

From the above decisions, it is absolutely clear that there is nothing in Article 226 of the Constitution of India to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. There can be no dispute at all as to the law laid down by the Hon'ble Supreme Court. What is relevant and important is the expression **"Here the previous order of Khosla J, affected the interest of persons who were not made parties to the proceeding before him"** which qualifies the power of review of the High Court under Article 226 of the Constitution of India. In other words, the law settled by the Hon'ble Supreme Court is that if the High Court had decided a petition in the absence of persons whose rights had been affected by it, the review of its earlier order by the High Court is permissible at the hands of such persons. Since the facts of the above cases are not identical with that of the present case, the law laid down therein will have no application to the facts of the present case. In the present case, the rights of the petitioners were not affected by the judgment and order dated 20-09-2018 for two reasons-one, at the time when the judgment and order dated 20-09-2018 was passed by this Court, they were not in the service of the MTU as the Assistant professors and two, they were not the parties in the writ petition. No material has been placed on record by the petitioners to show that their rights had been affected by the judgment and order dated

20-09-2018 passed by this Court. From their pleadings, it appears that they do have a mere apprehension that as and when the seniority list is prepared, the respondent Nos. 3 to 7 might become senior to them, since the services of the respondent Nos. 3 to 7 had been regularised from the date of their initial appointments. It may be noted that seniority is, no doubt, an incidence of service but it is not a vested right and is to be determined in accordance with law. The issue relating to the inter-se seniority between the petitioners and the respondent Nos. 3 to 7 was not the subject matter in the said writ petition with the result that this Court made no observation in respect thereof. In other words, the issue relating to inter-se seniority did not arise at all, as the petitioners were not in the cadre of the Assistant professors in the MTU at the time when the judgment and order dated 20-09-2018 was passed by this Court. In any case, since the petitioners are unable to demonstrate their rights which had been affected by the judgment and order dated 20-09-2018, the question of reviewing it by this Court in terms of the law laid down in *Shivdeo Singh (supra)* does not arise at all. In **Ramchandra Ganpat Shinde & anr Vs. State of Maharashtra & ors, (1993) 4 SCC 216**, the Hon'ble Supreme Court held that third party has no right to file an application for review. On top of that, in **Kamlesh Verma Vs. Mayawati & Ors., (2013) 8 SCC 320**, the Hon'ble Supreme Court, while considering the issue as to whether the review petitioner therein has made out a case for reviewing the judgment and order and satisfies the criteria for reviewing the same in review jurisdiction, had considered the scope of the review

jurisdiction. After referring to its earlier decisions, the Hon'ble Supreme Court has held:

*“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

*20.1. When the review will be maintainable:*

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

*The words "any other sufficient reason" have been interpreted in **Chhajju Ram v. Neki** and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd.***

*20.2. When the review will not be maintainable:*

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error*
- (vi) The mere possibility of two views on the subject cannot be a*

*ground for review.*

*(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*

*(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

*(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative”.*

The above decision of the Hon’ble Supreme Court has been referred to and relied upon by this Court in many cases. Over and above, it has been referred to by the Hon’ble Supreme Court in one of its recent decision rendered in **Akshay Kumar Singh Vs. State (NCT of Delhi), (2020) 3 SCC 431** wherein the Hon’ble Supreme Court has held that it is no longer res integra that the scope of review is limited and review cannot be entertained except in case of error apparent on the face of the record. Review is not a rehearing of the appeal over again. In a review petition, it is not for the Court to re-appreciate the evidence and reach a different conclusion. No material has been placed on record by the petitioners that there is an error apparent on the face of record warranting interference by this Court. The law laid down in **Kamlesh Verma** (supra) which enumerates the grounds on which the review petition can be filed, is the normal rule while the law laid down in Shivdeo Singh (supra) can be said to be an exception to the normal rule. In other words, the Shivdeo Singh case has added one more ground on the basis of which the High Court can review its earlier order, provided the earlier order had affected the rights of somebody who was not a party in the case. This is not so in the present



case for the reason that the petitioner's rights were not affected at all by the judgment and order dated 20-09-2018 passed by this Court.

[10] One aspect which the learned counsel appearing for the petitioners has emphasised, is that the regularisation of the services of the respondent Nos. 3 to 7 which had been done retrospectively from the date of their initial appointment, was illegal because of which their interests would be affected while determining the seniority, for which he has relied upon the decision rendered by the Hon'ble Supreme Court in **Ashok Kumar Srivastava** (supra), wherein a process relating to promotion was initiated by the UP Public Service Commission and on 15-06-2005, it recommended the names of six persons for promotion to the post of Readers. The respondent No.1 was placed at SI No.6 with a remark that the vacancy in respect of which he had been recommended, had arisen after the superannuation of Dr Hari Shanker Pandey on 31-07-2001. As he was given his seniority w.e.f. 18-08-2005, he questioned it before the Tribunal which directed him to submit a representation which was rejected by the State Government. Being aggrieved, he preferred a writ petition which was allowed with the direction that the State Government should consider his case and issue a fresh order. The penetrability came to be questioned by State Government before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the claim of the first respondent for conferment of retrospective seniority was absolutely untenable and the High Court had fallen into error by granting him the said benefit. While rendering the said decision, the Hon'ble Supreme Court referred to its

earlier decisions wherein it has been held that the seniority has to be decided on the basis of rules in force on the date of appointment and that the date of occurrence is not relevant for the determination of seniority. The relevant paragraph which is relied upon by the counsel appearing for the petitioners, reads as under:

*“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh where the court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below:(SCC pp. 281-82, para 45)*

*“45.(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one office or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.*

*(iv)The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.” ”*

As has been observed hereinabove, the facts of the above case are not identical to that of the case of the respondent Nos. 3 to 7 for the reason that the issue involved in the writ petition filed by them was as to whether the respondent Nos. 3 to 7 were entitled to be given regular appointments because the regular posts were available at the relevant time and as per AICTE norms, 80% of the 9 posts ought to be appointed on regular basis and due process of law was followed while conducting the recruitment process. It may be noted that their initial appointments were not made purely on stop gap arrangement and that too, without following due process of law. In fact, their appointments were made following due process of law by a Selection Committee against the regular posts. That is the reason why this Court, after relying upon the decisions rendered by the Hon'ble Supreme Court and in particular, the decision rendered in **Arjun Singh & ors Vs. State of Himachal Pradesh, (2015) 15 SCC 713**, allowed the writ petition directing that they be given regular appointments from the date of their initial appointments and since the judgment and order dated 20-09-2018 passed by this Court had not been challenged by anyone, it had attained its finality. The appropriate actions were taken by the State respondents to comply with it. The question of appointment of the respondent Nos. 3 to 7 with retrospective effect from the day when the vacancies were available, did not arise in their case. In fact, the services of the respondent Nos. 3 to 7 were regularised with effect from the date of

their initial appointments. When the writ petition was filed by the respondent Nos. 3 to 7, the petitioners were not borne in the cadre of the Assistant Professors and they could not said to be the necessary parties. The judgment and order dated 20-09-2018 was passed by this Court taking into account the facts and circumstances prevailing at that point of time and this Court could not have passed any order apprehending that it might affect the rights of somebody in future. At the time when the writ petition was filed by the respondent Nos. 3 to 7, the petitioners had merely submitted their applications for appointment as the Assistant professors. The mere submission of applications by the petitioners did not guarantee that they would be selected nor did it confer upon them any right for appointment and in other words, they did not have any vested right to be selected by the Selection Committee. In fact, no rights had accrued to the petitioners for their selection. As seen from the decisions rendered in **Shivdeo Singh** (supra) and **Pohla Singh** (supra) and relied upon by the counsel appearing for the petitioners, the High Court could review its earlier order under Article 226 of the Constitution of India, only when its earlier order had affected the rights/ interests of any person without him being made a party therein. In the present case, while passing the judgment and order by this Court, no vested rights/ interests of the petitioners had been affected at all by it in their absence and therefore, the question of reviewing its earlier order by this Court under Article 226 of the Constitution of India did not arise at all.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is devoid of merit and is, accordingly, dismissed with no order as to costs.

**JUDGE**

**FR/NFR**

*Devananda*

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