

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 92 of 2023

1. The State of Manipur through the Commissioner (Higher & Technical Education), Government of Manipur, Imphal, Manipur-795001.
2. The Director (Higher & Technical Education), Manipur.

..... Appellant/s

- Versus -

1. Shri Mayanglambam Chitaranjan Singh, aged about 29 years, S/o (L) M. Inaocha Singh, resident of Kakching Khunou Tampakyum Lai Leikai, P.O. Kakching & P.S. Waikhong, District Kakching, Manipur-795103.
2. Khumukcham Anandi Devi, aged about years, W/o Thingnam Shantikumar Singh, resident of Kakching Khunou Thingnam Tarung Leikai, P.O. Kakching & P.S. Waikhong, District Kakching, Manipur-795103.

..... Respondent/s

3. The Kakching Khunou College, Kakching Khunou, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103 through the Principal.
4. Shri Sarangthem Kishan, S/o S. Amu Singh, Kakching Khunou Lamhaba Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.
5. Khumukcham Sarda Devi, D/o Khumukcham Suben Singh of Kakching Khunou Umathel Mathak Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.
6. A. Somola Devi, W/o Kh. Meghachandra Singh of Kakching Khunou Bokul Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.
7. Khumukcham Beky Singh, S/o Khumukcham Babu Singh of Kakching Khunou Bokul Leikai, P.O. Kakching & P.S. Waikhong, Kakching District Manipur-795103.
8. Angom Somorjit Singh, S/o Angom Herachandra Singh of Kakching Khunou Uchan Makhong Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103
9. Akoijam Bonish C/o Kakching Khunou College, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.

.....Proforma Respondents

With
WA No. 102 of 2023

Shri Sarangthem Kishan, S/o S. Amu Singh, Kakching Khunou
Lamhaba Leikai, P.O. Kakching & P.S. Waikhong, Kakching
District, Manipur-795103.

..... Appellant/s

- Versus -

1. Shri Mayanglambam Chitaranjan Singh, aged about 29 years, S/o (L) M. Inaocha Singh, resident of Kakching Khunou Tampakyum Lai Leikai, P.O. Kakching & P.S. Waikhong, District Kakching, Manipur-795103.
2. Khumukcham Anandi Devi, aged about years, W/o Thingnam Shantikumar Singh, resident of Kakching Khunou Thingnam Tarung Leikai, P.O. Kakching & P.S. Waikhong, District Kakching, Manipur-795103.
3. The State of Manipur represented by the Commissioner (Univ & Hr. Edn.), Government of Manipur, at Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
4. The Director (Univ. & Hr. Edn), Government of Manipur, at Keishampat Wahengbam Leikai Rd., Keishamthong, Imphal, P.O. & P.S. Imphal, Imphal West District, Manipur-795004.
5. The Governing Body, Kakching Khunou College, Kakching Khunou, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103 represented by its Chairman.
6. The Kakching Khunou College, Kakching Khunou, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103 through its Principal.

..... Respondent/s

7. Khumukcham Sarda Devi, D/o Khumukcham Suben Singh of Kakching Khunou Umathel Mathak Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.
8. A. Somola Devi, W/o Kh. Meghachandra Singh of Kakching Khunou Bokul Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.
9. Khumukcham Beky Singh, S/o Khumukcham Babu Singh of Kakching Khunou Bokul Leikai, P.O. Kakching & P.S. Waikhong, Kakching District Manipur-795103.

10. Angom Somorjit Singh, S/o Angom Herachandra Singh of Kakching Khunou Uchan Makhong Leikai, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103
Akoijam Bonish C/o Kakching Khunou College, P.O. Kakching & P.S. Waikhong, Kakching District, Manipur-795103.

11. Akoijam Bonish Singh, C/o Kakching Khunou College, PO. Kakching, PS Waikhong, District: Kakching, Manipur-795103.

.....*Private Respondents*

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. K. SOMASHEKAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellant/s	::	Th. Sukumar, G.A.
For the respondent/s	::	M. Devananda, Sr. Adv. assisted Ms. Jyotsana, Adv.; Mr. L. Shashibhushan, Sr. Adv. assisted by Mr. Fakharuddin, Adv.
Date of hearing	::	15.07.2025
Date of Judgment & Order	::	28.07.2025

JUDGMENT & ORDER (CAV)

[A. Guneshwar Sharma, J.]

[1] Heard Mr. Th. Sukumar, learned G.A. for the State appellant, Mr. M. Devananda, learned senior counsel assisted by Ms. Jyotsana, learned counsel on behalf of respondent Nos. 1 & 2 and Mr. L. Shashibhushan, learned senior counsel assisted by Mr. Fakharuddin, learned counsel on behalf of respondent No. 4 and who is also appellant in connected WA No. 102 of 2023. None appeared on behalf of other respondents.

[2] These writ appeals are heard and considered by this common order, as they are arising out of the same impugned order. For easy reference, the position of the parties are referred to as in WA No. 92 of 2023.

[3] WA No. 92 of 2023 is preferred by the State of Manipur against the impugned order dated 17.10.2019 passed by the Ld. Single Judge of this Court in WP(C) No. 543 of 2018 filed by respondent Nos. 1 & 2 herein as petitioners, wherein the State appellant was directed to absorb the services of

respondent Nos. 1 & 2 herein (writ petitioners) as Government Employees upon conversion of Kakching Khunou College as a full-fledged Government College as effected by the Government Order dated 28.06.2018.

[4] In the impugned order, Ld. Single Judge directed the State Authority to absorb the service of the respondent Nos. 1 & 2 herein (writ petitioners) as done in the case of other private respondents herein (i.e. respondent Nos. 4 to 9).

[5] The main grounds for the appeal are- (i) Ld. Single Judge has committed manifest error without examining the authenticity of the appointment order dated 21.11.2017 of Sarangthem Kishan (respondent No. 4 herein); (ii) the names of respondent Nos. 1 & 2 were not forwarded by the College Authority to the State Government for absorption and (iii) it was wrongly held that respondent No. 4 (Sarangthem Kishan) had already been absorbed prior to the passing of the impugned order.

[6] WA No. 102 of 2023 is filed by respondent No. 4 [namely, Sarangthem Kishan] in the connected writ appeal, i.e., WA No. 92 of 2023 on the ground that the Ld. Single Judge has wrongly held his date of appointment as 21.11.2017. It is stated that his actual date of appointment is 01.12.2016 being appointed along with the private respondent Nos 5-9.

[7] In order to understand the issue involved in both writ appeals, it will be convenient to refer the contentions of the writ petition i.e. WP(C) No. 543 of 2018 filed by respondent Nos. 1 & 2.

[8] Respondent Nos. 1 & 2 filed the writ petition, being WP(C) No. 543 of 2018, inter-alia, stating that they were appointed along with respondent No. 4 herein (i.e. Sarangthem Kishan) as LDC and Lab Assistant in Kakching Khunou College (the then Government Aided College) vide order dated 21.11.2017 and they also submitted joining report on the same day.

[9] It is stated that the Government of Manipur converted 6 (six) aided colleges into full-fledged Colleges including Kakching Khunou College. Vide letter dated 13.12.2016, the Addl. Director, Directorate of Univ. & Hr. Edn., Government of Manipur informed the Secretary/Principal, Kakching Khunou College to submit particulars of employees both approved and unapproved on or before 17.12.2016 without fail and vide letter dated

17.12.2016, the Principal, Kakching Khunou College submitted a list of teaching and non-teaching staff both approved and unapproved to the Director, University and Higher Education, Government of Manipur.

[10] It is the case of respondent Nos. 1 & 2 herein that they were not included in the list of absorption. Through an RTI application, they came to know that their names were not included in the list already submitted by the Principal of Kakching Khunou College for absorption of staff both teaching and non-teaching and approved and unapproved upon conversion of full-fledged Government College where the names of the private respondents were found at serial Nos. 21, 30, 32, 33, 34 & 35 of the non-teaching staff lists.

[11] Being aggrieved, the petitioners approached this Court by way of writ petition under Article 226 of the Constitution praying for quashing the list submitted by the College Authority leaving out their names and, in the alternate, for a direction to include their names in the list.

[12] The State authority filed counter affidavit to the writ petition, inter-alia, stating that the State Government cannot give any direction to the governing body of Government Aided College to include or delete/exclude any teaching and non-teaching staff while submitting the list of employees for absorption in the full-fledged Government College. It is also stated in para 3 of the counter affidavit that Governing Body of the Government Aided College is the appointing authority as per Manipur Education Code 1982 and the State Government is the only felicitator of grant-in-aid to the Government Aided College and cannot interfere directly to the internal affair of the Government Aided College.

[13] It is further stated in para 6 of the counter affidavit that the list of teaching and non-teaching staff was submitted by the authorities of the Aided College concerned for absorption of service consequent upon conversion of Government Aided College as full-fledged Government College and it is the duty of the Government only to consider the case of the employees both teaching and non-teaching as per the condition provided under Government Order dated 28.06.2018 read with rules and instruction issued from time to time. It is again reiterated in para 8 of the counter affidavit of the State respondent that it is for the Governing Body of the Government Aided College

to submit the list of teaching and non-teaching staffs of the respective College and the State Government has nothing to do with such lists.

[14] The college authority as well as other private respondents did not filed any response to the contention made in the writ petition.

[15] After hearing the parties, the Ld. Single Judge, by the impugned order dated 17.10.2019, observed that respondent Nos. 1 & 2 herein as well as respondent No. 4 herein were appointed by the common order dated 21.11.2017 and the respondent No. 4 and other private respondents i.e. respondent Nos. 5 to 9 were absorbed by the Government.

[16] After hearing the learned counsel for the parties in detailed and relying on earlier order of absorption in respect of Jiribam College in WP(C) No. 282 of 2017, the Ld. Single Judge observed that respondent Nos. 1 & 2 herein are also entitled for absorption as the respondent No. 4 (i.e. Sarangthem Kishan) was already absorbed and authenticity of the appointment order dated 21.08.2017 cannot be questioned after his absorption and Ld. Single Judge also observed that other private respondents were also absorbed by the authority.

[17] Accordingly, writ petition was disposed of by directing the State Authority to issue appropriate order absorbing respondent Nos. 1 & 2 as Government Employees upon conversion of Kakching Khunou College as Government College vide order dated 12.08.2016 issued by the State Authority.

[18] The State Authority filed an appeal against the impugned order dated 17.10.2019 passed by the Ld. Single Judge in WP(C) No. 543 of 2018. However, the same was dismissed on delay. The State preferred SLP No. 15798 of 2022 before the Hon'ble Supreme Court and vide order dated 18.04.2013, the matter was remanded to the Division Bench to decide on merit after condoning delay in filing the appeal, as absorption of non-teaching staff in Government Aided College as government employee will intend substantial financial involvement of the State. Accordingly, the writ appeal is listed before this Court for adjudication on merit.

[19] Since WA No. 92 of 2023 filed by the State government and WA No. 102 of 2023 filed by Sarangthem Kishan have arisen out the same

impugned order dated 17.10.2019 passed by learned Single Judge in WP(C) No. 534 of 2018, these matters are taken up hearing together for disposal by a common judgment.

[20] In the writ appeal, the State has taken altogether different grounds not raised in the counter affidavit filed before the Writ Court.

[21] The main ground taken in the writ appeal is that:

- (i) The Ld. Single Judge wrongly held that respondent Nos. 1 & 2 are entitled for absorption.
- (ii) The Ld. Single Judge was wrong in upholding the authenticity of the appointment order dated 21.11.2017 of Sarangthem Kishan (respondent No. 4).
- (iii) The appointment of respondent Nos. 1, 2 & 4 were under enquiry and final report is to be submitted.
- (iv) Ld. Single Judge was wrong in concluding that other employees appointed after respondent Nos. 1 & 2 were also absorbed.
- (v) The appointment and regularization of Sarangthem Kishan (i.e. respondent No. 4) is kept in abeyance till final report is submitted in the enquiry.

[22] It is the specific plea that the State Government cannot give any direction to the Governing Body of the Government Aided College to include or exclude any teaching or non-teaching staff and it is internal affair of the college. The Secretary of the Governing Body is the appointment authority.

[23] In WA No. 102 of 2023, the appellant- S. Kishan [the respondent No. 4 in WA No. 92 of 2023], has challenged the decision of the Ld. Single Judge in the impugned order dated 17.10.2019 in WP(C) No. 543 of 2018 on the grounds that:

- (i) No notice was served on respondent No. 4 about the writ petition filed by respondent Nos. 1 & 2.
- (ii) The authenticity of the appointment order dated 21.11.2017 of respondent Nos. 1, 2 & 4 herein cannot be a subject matter of writ petition under Article 226 of the Constitution.

- (iii) The lists of teaching and non-teaching staff of Kakching Khunou College submitted vide letter dated 17.12.2016 by the Principal is a fabricated and manufactured document and the finding and impugned order cannot be sustained, as respondent No. 4 was appointed vide order dated 01.12.2016.

[24] Mr. Th. Sukumar, learned G.A., submits that the finding of the Ld. Single Judge suffers from serious non-appreciation of material facts on record. The respondent Nos. 4 to 9 were absorbed vide order dated 19.03.2020 issued by the State Authority and on the date of the impugned judgment i.e. 17.10.2019, none of the private respondents was absorbed by the State Authority. Hence, the observation and reasoning of the Ld. Single Judge may not be correct to the extent that since similarly situated persons have already been absorbed, the respondent Nos. 1 & 2 are entitled for absorption as Government employees. None of the employees appointed after the respondent Nos. 1 & 2 was absorbed by the State government.

[25] The order of absorption of Mr. Saranthen Kishan (i.e. respondent No. 4 herein) has been kept suspension as there are two appointment orders for him i.e. 01.12.2016 and 21.11.2017 and enquiry is pending in this regard. Hence, the direction of the Ld. Single Judge of directing to absorb the service of respondent Nos. 1 & 2 on the basis of absorption of respondent No. 4 cannot be sustained. This ground was not especially taken by the State appellant before the Writ Court and included for first time as a ground in the memo of appeal.

[26] Mr. Th. Sukumar, learned G.A., makes an oral submission that since the names of respondent Nos. 1 & 2 were not forwarded by the Governing Body of Kakching Khunou College, their names cannot be considered for absorption.

[27] In view of the above submissions, Mr. Th. Sukumar, learned G.A., prays that the writ appeal be allowed and the order dated 17.10.2017 passed by the Ld. Single Judge be side aside.

[28] On the other hand, Mr. M. Devananda, learned senior counsel for respondent Nos. 1 & 2, submits that in the writ appeal, the State

Government has made up a totally different case not pleaded before the Writ Court. Learned senior counsel for respondent Nos. 1 & 2 draws the attention of this Court to the contents of para 3, 6 & 8 of the counter affidavit filed by the State respondent before the Ld. Single Judge wherein it is stated that the Governing Body of the Government Aided College is the appointing authority and the Government has no role to advise the Governing Body to include or exclude any name of teaching and non-teaching employee, both approved and unapproved, for forwarding to the State Government for absorption upon conversion of the Government Aided College as a full-fledged Government College. The role of the Government is only to examine whether the names submitted by the Governing Body of the Aided College are eligible for absorption as per the relevant rules.

[29] Learned senior counsel has further pointed out that during the pendency of the writ appeal and in order to subvert the direction of the Ld. Single Judge, the State Authority, later on, issued two office orders dated 22.01.2021 & 23.02.2021 keeping in abeyance the absorption of Mr. Sarangthem Kishan (i.e. respondent No. 4 herein) till completion of the enquiry and keeping in abeyance consideration of the respondent Nos. 1&2 till then. The State Government has also issued a subsequent order dated 27.12.2021 fixing the cut-off date of absorption as on 17.12.2016.

[30] Mr. M. Devananda, learned senior counsel for respondent Nos. 1 & 2 (writ petitioner), submits that with malafide intention and to undo the direction of the Ld. Single Judge, the State Government issued these subsequent orders. It is urged that the same amounts to contemptuous act and is done in order to obstruct the process of law and the administration of justice of this Court.

[31] Learned senior counsel for the writ petitioners draws the attention to the affidavit-in-opposition [Annexure A-17 in WA No. 102 of 2023] filed by Ex-Secretary, Governing Body of the College, i.e., the respondent No. 5 in the pending writ petition being WP(C) No. 990 of 2021 filed by Mr. Sarangthem Kishan (i.e. respondent No. 4 herein) wherein it has been clarified that the date of appointment of respondent No. 4 is 01.12.2016 and another

date of appointment, i.e., 21.11.2017 with respect to respondent No. 4 was an inadvertent mistake.

[32] It is stated that the plea of the existing of two appointment orders for the respondent No. 4 cannot be accepted in view of the clarification submitted by the Governing Body of the College in connected WP(C) No. 990 of 2021 filed by respondent No. 4 herein.

[33] Mr. M. Devananda, learned senior counsel for the petitioner, has also submitted that neither the Governing Body nor the State Authority disputed the date of appointment of respondent Nos. 1 & 2 herein i.e. 21.11.2017. None of the authorities has even stated that the appointment order of the respondent Nos. 1 & 2 is fabricated. However, Mr. M. Devananda, learned senior counsel, fairly concedes that the date of absorption of employees of the 6 (six) newly converted Aided College including Kakching Khunou College is 19.03.2020. It is clarified that since this fact was not properly submitted by any of the parties before the Writ Court, the Ld. Single Judge might have committed mistake in recording the fact that the respondent No. 4 herein and others were absorbed prior to the date of the impugned order dated 17.10.2019. However, he has pointed out that this error does not affect the merit of the case of direction to absorb similarly situated persons.

[34] Since the appointment of respondent Nos. 1 & 2 is not disputed and they had already been appointed on a date prior to 19.03.2020 i.e. the date of absorption, their names ought to be included in the list of employees sent by the Governing Body of the College to the State Authority.

[35] Mr. M. Devananda, learned senior counsel for the writ petitioners, submits that respondent No. 1 & 2 are also eligible as per rule for being absorption against the respective post. It is further submitted that mere failure of the employer to forward the names of respondent Nos. 1 & 2 to the Government for absorption, the employees shall not to be made to suffer. The learned senior counsel seriously questions the fixing of 17.12.2016 as a cut-off date for absorption after passing of the impugned order dated 17.10.2019. It is vehemently submitted that the same is nothing but to outreach the authority of this Court and the same should be seriously viewed by this Hon'ble Court.

[36] Learned senior counsel refers to the judgment of **(2015) 1 SCC 347 para 22** for equal treatment to identically situated persons and **(2023) 8 SCC 116 para 16 & 17** to the principle of approbate and reprobate and inapplicability of contradictory plea. Learned senior counsel also relies on the judgment of the Hon'ble Supreme Court **Calcutta State Transport Corporation v. Ashist Chakraborty**: <http://indiankanoon.org/doc/7125977> that the employees should not be made to suffer for the lapse on part of the employer. Learned senior counsel also refers to another order of Division Bench of this Court vide order dated 20.11.2023 in writ appeal being WA No. 90 of 2023 that the employees cannot be made to suffer for failure of the employer to forward their names for absorption to the State Government. It is prayed that the writ appeals be dismissed being devoid of any merit.

[37] On the other hand, Mr. L. Shashibhushan, learned senior counsel for respondent No. 4, who is the writ appellant in cross writ appeal being WA. No. 102 of 2023, raises the issue concerned with the finding of the Writ Court in the impugned order dated 17.10.2019 to the effect that the respondent Nos. 1, 2 & 3 were appointed on the same date vide order dated 21.11.2017.

[38] It is pointed out that respondent No. 4 was appointed on 01.12.2016 along with other private respondents. Due to erroneous observation of the Ld. Single Judge that respondent No. 4 was appointed on 21.11.2017, the State Government initiated an enquiry on the ground that respondent No. 4 has two orders of appointment on different dates and due to this enquiry, his absorption order was kept in abeyance. It is submitted that the observation of the Writ Court to this effect may be set aside. It is stated that he has challenged the keeping abeyance order by way of a writ petition being WP(C) No. 990 of 2021 and the same is still pending before the writ court.

[39] After the hearing was concluded on 15.07.2025 and reserving the writ appeals for judgment, Mr. Th. Sukumar, learned GA submitted his written submissions dated 23.07.2025 taking a totally different stand which has not been pleaded in the counter affidavit before the writ court nor in the memo of appeal before the writ court. In the written submissions, the State

appellant raises for the first time (i) the plea of fraud by the respondent Nos. 1 & 2, (ii) the respondent Nos. 1 & 2 not coming with clean hands and hence not entitled to any relief, and (iii) cut-off date for absorption as on 17.12.2016 on the basis of subsequent notification issued after the date of order by the writ court. Learned GA has mentioned the following case law in his written submissions: (i) **A. V. Papaya Sastry v. Govt. of A.P.: (2007) 4 SCC 221**- judgment obtained by playing fraud on court is a nullity; (ii) **Dalip Singh v. State of U.P.: (2010) 2 SCC 114**- petition coming with unclean hand can be thrown at the very threshold without considering on merit; (iii) **Ramjas Foundation v. Union of India: (2010) 14 SCC 38**- person coming with unclean hands is not entitled to any relief under Articles 32, 226 and 136 of the Constitution of India; (iv) **M/s Bhikuse Yamasa Kshatriya (P) Ltd. v. Union of India: (1964) 1 SCR 860**- selective application of law as per exigencies is permissible; (v) **Union of India v. M/s Parameswaran Match Works: (1975) 2 SCR 573**- classification can be based on a particular date and the same is not always arbitrary; (vi) **Dr. Sushma Sharma v. State of Rajasthan: (1985) Supp SCC 45**- fixing of a date for the purpose of the eligibility is per se not arbitrary; and (vii) **Ramarao v. All India Backward Class Bank Employees Welfare Association: (2004) 2 SCC 76**- cut-off date cannot be faulted only on the ground that some persons fall outside the wrong side of such date.

[40] This Court has considered the materials on record, the submissions made by the parties and decisions cited before this Court.

[41] Respondent Nos. 1 & 2, as writ petitioners, approached this Court for a direction to the College Authority to forward their names for absorption and also for a direction to the State Authority for absorption their names, as done in the case of the private respondents who are similarly situated employees.

[42] Before the Writ Court as well as before this Bench, the Governing Body of the College has not filed any response especially as to why the names of respondent Nos. 1 & 2 were not forwarded to the State Government for absorption upon the conversion of six Government Aided Colleges including Kakching Khunou College as full-fledged Government College. Due to lapse

of the Governing Body of the College, the names of respondent Nos. 1 & 2 could not be considered by the State Authority for absorption.

[43] The State Authority has rightly pointed out that the Governing Body is the appointing authority of the College and the Government has no role in forwarding the names of teaching and non-teaching staff, both approved and unapproved, for absorption upon conversion of the College to full-fledged Government College. It is the sole prerogative of the Governing Body of the College upon verification of credentials of the employees.

[44] It is not the case of the Governing Body of the College nor the State Authority that respondent Nos. 1 & 2 are not eligible for absorption as per the existing rule. Their appointment order dated 21.11.2017 is not disputed by and/or before any authority. However, in the counter affidavit filed by the Governing Body of the Kakching Khunou College in connected case, i.e., WP(C) No. 990 of 2021 filed by respondent No. 4 herein, it has been clarified that the name of Mr. Sarangthem Kishan was wrongly included in the appointment order dated 21.11.2017. With this clarification what remains that vide order dated 21.11.2017, only two persons were appointed i.e. the respondent No. 1 as LDC and the respondent No. 2 as Lab Assistant in Kakching Khunou College.

[45] The clarification by the Governing Body in the subsequent writ petition does not annul the appointments of the respondent Nos. 1 & 2 vide order dated 21.11.2017. It is also an admitted fact that the absorption was vide order dated 19.03.2020 i.e. much after the appointment of the respondents herein.

[46] Perhaps, the parties before the Writ Court did not appraise the true facts of the case properly. In the circumstances, there might be some inconsistency in the observations made by the Ld. Single Judge. The observation that the private respondent Nos. 4 to 9 were already absorbed, may not be factually correct. However, this does not change the fact that similarly situated employees were absorbed by the State Authority on the recommendation of the Governing Body of the College. The respondent Nos. 1 & 2 were left out the process of absorption due to the lapse of the Governing Body of the College.

[47] There is no justification nor explanation given by the Governing Body of the College as to why the names of the respondent No. 1 & 2 were not included in the list of the names forwarded to the State Government for absorption. Due to this lapse on the part of the Governing Body, the case of the respondents could not be considered. If their names were included by the Governing Body, the names of respondent Nos. 1 & 2 could have been considered and absorbed, as State Government had not raised any objection to their eligibility as per the existing rules. The only ground taken by the State appellant is that the names of the respondent Nos. 1 & 2 were not forwarded by the Governing Body of the aided college to the government for absorption.

[48] The State appellant has taken another new plea in the written submissions filed after the appeals have been reserved for order. For the first time, the plea of fraud has been introduced and justification of fixing cut-off date as 17.12.2016 for absorption. In the present case, the State appellant is taking different and inconsistent stands at each stage of the litigation. Before the writ court, the simple stand is that the names of the respondent Nos. 1 & 2 were not forwarded by the Governing Body of the Aided College and hence their names could not be considered. In the memo of appeal, the State has taken new pleas not pleaded before the writ court of error in the order. In the written submissions filed after reserving for order in the writ appeals, the plea of fraud and justification of cut-off of date for absorption has been introduced for the first time. It is not the case of the State appellant that the respondent Nos. 1 & 2 are ineligible for absorption as per rules. It is the settled proposition of law that a person cannot take inconsistent and totally divergent stands in the same transaction. In the case of **Rattan Lal v. State of Haryana: (1985) 4SCC 43**, Hon'ble Supreme Court observed as “..... *It is needless to say that the State Government is expected to function as a model employer*”.

[49] We are conscious of the finding of co-ordinate bench of this Court in writ appeal being WA No. 90 of 2023 regarding the plea of the State that the names of the employees were not forwarded by the management and hence was not considered for absorption. The relevant portion is reproduced as:

“The Hon’ble Supreme Court vide the said order dated 18.04.2023 further clarified that the argument of the State that original writ petitioner was not absorbed because his name was not sent by the concerned managing committee, is untenable and would not be available to them in view of the unimpeachable findings arrived at by the Ld. Single Judge in this behalf, whilst disposing of the writ petition.”

[50] In the circumstances, WA No. 92 of 2023 filed by the State Government is dismissed, being devoid of any merit. The finding and observation of the Ld. Single Judge in the impugned order dated 17.10.2019 in WP(C) No. 543 of 2018 is modified to the extent that the private respondent Nos. 4 to 9 were regularized on 19.03.2020 and not prior to the date of impugned order i.e. 17.10.2019. This fact alone cannot negate the case of the respondent Nos. 1 & 2. The failure of the Governing Body of Kakching Khunou College to forward the names of the respondent Nos. 1 & 2 for absorption to the Government, cannot be a ground to deny the benefit of absorption to them. It is directed that the respondent Nos. 1 & 2 be absorbed as government employees as done to other similarly situated employees. It is the settled principle of law that the employees should not suffer for the lapses on the part of their employer, especially when they are not at fault. Benefits given to similarly situated employees cannot be denied to them.

[51] WA No. 102 of 2023 is disposed of taking judicial note of the contents of the counter affidavit of the Governing Body of the College in the pending writ petition being WP(C) No. 990 of 2021 filed by S. Kishan himself, where the Governing Body has explained that the name of the appellant i.e. Sarangthem Kishan was wrongly included in the order dated 21.11.2017 and his appointment order is dated 01.12.2016. Since this issue is pending for adjudication before the Writ Court, we do not intend to express any opinion and the matter is left to be decided in that proceeding.

[52] With this observation, writ appeals are disposed of. No cost.

[53] State authority is directed to issue necessary order of absorption of the respondent Nos. 1 & 2 within a period of 2 (two) months from the date of receipt of a copy of this order.

[54] Send a copy of this judgment to the Administrative Secretary (Higher & Technical Education), Government of Manipur, for information and necessary compliance.

JUDGE

CHIEF JUSTICE

FR/NFR

Kh. Joshua Maring