



## **THE HIGH COURT OF SIKKIM : GANGTOK**

### **Writ Petition (C) No. 35 of 2005**

1. Mrs. Declak Pradhan,  
Assistant Director,  
Human Resource Development  
Department (Education).
2. Mrs. Ingrid Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).
3. Shri K. T. Wangchuk,  
Assistant Director,  
Human Resource Development  
Department (Education).
4. Shri K. G. Chopel,  
Assistant Director,  
Human Resource Development  
Department (Education).
5. Shri Sonam T. Lepcha,  
Assistant Director,  
Human Resource Development  
Department (Education).
6. Shri P. M. Khanal,  
Assistant Director,  
Human Resource Development  
Department (Education).
7. Mrs. Kabita Moktan,  
Assistant Director,  
Human Resource Development  
Department (Education).
8. Shri P. R. Dulal,  
Assistant Director,  
Human Resource Development  
Department (Education).
9. Mrs. Karma Doma Sangdarpa,  
Assistant Director,  
Human Resource Development  
Department (Education).
10. Shri Hari Prasad Shankar,  
Assistant Director,  
Human Resource Development  
Department (Education).



11. Shri Santosh Kumar Alley,  
Assistant Director,  
Human Resource Development  
Department (Education).
12. Shri Tshering Panzo Sherpa,  
Assistant Director,  
Human Resource Development  
Department (Education).
13. Shri Basant Kumar Sharma,  
Assistant Director,  
Human Resource Development  
Department (Education).
14. Shri Sonam Palzor Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).
15. Shri Bilal Prabahakar,  
Assistant Director,  
Human Resource Development  
Department (Education).
16. Mrs. Chitrakala Gurung,  
Assistant Director,  
Human Resource Development  
Department (Education).
17. Shri Pema Gyaltzen Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).
18. Shri Abhijit Chakraborty,  
Assistant Director,  
Human Resource Development  
Department (Education).
19. Shri Thupden Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).
20. Mrs. Chime Donka,  
Assistant Director,  
Human Resource Development  
Department (Education).
21. Shri Gyaltzen Sherpa,  
Assistant Director,  
Human Resource Development  
Department (Education).



22. Shri Kumar Pradhan,  
Assistant Director,  
Human Resource Development  
Department (Education).
23. Shri Kalzang Dorjee Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).
24. Shri Karma Samten Bhutia,  
Assistant Director,  
Human Resource Development  
Department (Education).

... **Petitioners.**

**- Versus -**

1. State of Sikkim,  
Through Chief Secretary,  
Government of Sikkim,  
Gangtok.
2. Secretary,  
Human Resource Development Department,  
Government of Sikkim,  
Gangtok.
3. Secretary,  
Department of Personnel, Administrative  
Reforms and Training,  
Government of Sikkim,  
Gangtok.
4. Suk Bahadur Subba,  
Assistant Director,  
Human Resource Development Department (Education),  
Government of Sikkim.  
Gangtok.
5. Tsewang Penzo Pazo,  
Assistant Director,  
Human Resource Development Department (Education),  
Government of Sikkim.  
Gangtok.

... **Respondents.**

For the Petitioners : Mr. B. Sharma, Sr. Advocate with Mr. B. Pokhrel,  
Advocate.

For the Respondents: Mr. J. B. Pradhan and Mr. Karma Thinley,  
Government Advocates for the State-Respondents.

Mr. N. Rai, Advocate for Respondent Nos.4 and 5.





**PRESENT: HON'BLE MR. JUSTICE AJOY NATH RAY, CHIEF JUSTICE  
AND  
HON'BLE MR. JUSTICE N. SURJAMANI SINGH, JUDGE**

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**DATE OF JUDGMENT : 20<sup>TH</sup> MARCH, 2007.**

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**JUDGMENT**

**The Court :**

1. This is a Writ Petition at the instance of 24 Petitioners who were aggrieved because of the promotion granted as Assistant Director of Education to Respondent Nos.4 and 5. The promotion was granted to Respondent Nos.5 and 4 on 18.11.2003 and 07.12.2004 respectively.
2. At the time of the promotion of the Respondents they were substantively post-graduate teachers but they had been working on deputation in the concerned Education Department. Respondent No.4 was on deputation from 1999 and Respondent No.5 was on deputation from 1996.
3. The Rules for promotion, contained in the Sikkim State Education Service Rules, 1996 leave no manner of doubt that Assistant Director, Junior Grade is a post which is to be filled up 100% by way of promotion and the feeder post is only that of an Assistant Education Officer. Further, the promotional qualification is 8 years of regular service as Assistant Education Officer.
4. The affidavit-in-opposition on behalf of the State Government and the affidavits on behalf of the Respondent Nos.4 and 5 admit the position that these two Respondents were not Assistant Education Officers in



- ▲ substantive capacity, and could not be promoted in accordance with, or in compliance of the said Rules.

5. The only issue in this case is with regard to the interpretation and application of the rule to relax the said Rules, which is a Rule 16 of the said Rules. It is quoted below:

“16. POWER TO RELAX

Where the Government is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or cadre posts.”

6. In the Notification relating to the Respondent No.4, dated 7.12.2004, it was mentioned (i) that he had rendered satisfactory service, (ii) that the State Government was desirous of utilizing the existing provision of 100% promotional quota and (iii) that the State Government was desirous for absorbing Suk Bahadur Subba as Assistant Director, Text Book (Limboo).

7. In the Notification dated 18.11.2003 with regard to Tsewang Penzo Pazo, it was mentioned only that the Government was desirous of utilizing the existing provision of 100% promotional quota and therefore, the Rules were being relaxed in favour of Pazo.

8. Several legal arguments were made but once the facts are appropriately gripped, the answer to this Writ Petition can be but one. The argument that the relaxation rule must be applied to more persons than one and not to any single person is not a good argument. The category or class might consist of one particular person only, in a particular instance.

9. The case of Suk Bahadur Subba provides a perfect example. He was a post-graduate teacher in the Limboo language. There are <sup>three</sup> (3) official languages in the State – Lepcha, Bhutia and Limboo leaving aside the



better known State language, Nepali. He was working on deputation from 1999 specifically for looking after the Limboo Text Book Department up to so far as his official status allowed him to do so. The Limboo language is not known widely or perhaps at all outside the State. There is no designation called Assistant Director, Text Book (Limboo). But his absorption was made because he was needed to look after the Limboo Text Books, for such things as approval, or even writing those for study by students. So the misdescription of the post gives the real (and good) reason for absorbing Subba.

**10.** The relaxation of the rule made in regard to Suk Bahadur Subba is eminently justified. No other prospective promotee claims to be familiar with the Limboo language; as such the reason recorded in the order in relation to Subba is *bona fide* and compelling. In relation of Suk Bahadur Subba, Respondent No.4, the Writ Petition can only be and is hereby dismissed.

**11.** The Respondent No.5's case presents a different story. In the Notification relating to him, it is only mentioned that he is to be absorbed as Assistant Director, Education in consultation with the Sikkim Public Service Commission. The Sikkim Public Service Commission, of course, has not objected to the Respondent No.5, and has indeed accorded its sanction, but that is not conclusive of the matter.

**12.** Numerous persons were possible promotees as Assistant Director, Education and these are the 24 Petitioners before us. Their claims were not considered but Respondent no.5 got the Assistant Director's post.

**13.** It is true that the post-graduate teacher's scale is the same as the scale of the Assistant Director and the scale of an Assistant Education





Officer is a lower scale. But this does not mean that absorption of the post-graduate teacher can be made as Assistant Director, Education without paying any attention to the Rules or without complying with Rule 16, namely the rule relating to relaxation.

**14.** The Notification in relation to the Respondent No.5 does not earmark him for any specialization as it is done in the case of the Respondent No.4. The State Government's affidavit also does not earmark him as such a specialist, as it does Respondent No.4, in regard to his Limboo language specialization. In his own affidavit, the Respondent No.5 mentions that he has got training in Mass Communication and because of such training and other factors (see his affidavit by way of Counter, especially paragraphs 3a to 3d), he was eminently eligible and in fact the only person to be promoted as Assistant Director (Audio Producer) under the Education Technology Cell of the Human Resources Department.

**15.** This is a self taken stand going ahead of the State Government's stand. This reason, that the Respondent No.5 was eminently qualified to become Assistant Director (Audio Producer) is nowhere to be found in the Notification relating to the Respondent No.5. The Limboo language is mentioned in two places in the fourth Respondent's Notification, but neither Audio Producer, nor specialized mass communication is mentioned with regard to the fifth Respondent in his granting Notification.

**16.** The relaxation rule specifies that reasons are to be recorded for relaxation and these reasons, naturally, have to be the reasons of the State, and not the reasons of the Respondent No.5 himself. The reason given by the State does not bear scrutiny at all, as 100% utilization of promotional quota could be easily made even without posting Respondent No.5 as

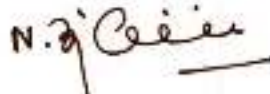


Assistant Director. Many (e.g., the 24 writ petitioners) were waiting to be promoted.

17. The Writ Petition accordingly succeeds with regard to Respondent No.5. The Notifications relating to his absorption as Assistant Director including the Notification dated 18.11.2003 are hereby quashed and declared as null and void. The concerned seniority lists will be corrected so as not to include Respondent No.5 as figuring at all in the Sikkim State Education Service cadre as per the Rules of 1996. The only relief which we grant to Respondent No.5 is that although he shall not, from today, render service as Assistant Director, Education or be paid any sum of money as such, yet no recovery of any emoluments paid to him during the pendency of the Writ Petition will be <sup>made</sup> ~~recovered~~ from him, and further, he will be immediately given, as from today, an appropriate designation and posting so that he gets all his emoluments as post-graduate teacher from today without any break-in-service or loss of seniority as post-graduate teacher. The order naturally does not prevent any deputation being permitted to Respondent No.5 in accordance with the usual rules and practice, even in the Education Department itself, without interfering with the petitioners' rights.

18. There will be no order as to costs.

  
(Ajoy Nath Ray, CJ)

  
(N.S. Singh, J.)