



# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

Writ Petition (C)

No.

7

of 2007

Mrs. Bhumika Sharma

Petitioner/Appellant

Versus

State of Sikkim & others

Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
01.	08.5.07	<p>Present: Miss (Dr.) Doma T. Bhutia, Advocate for the Petitioner.</p> <p>Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for the State-Respondents.</p> <p>...</p> <p>Heard Dr. Doma T. Bhutia, learned counsel for the Petitioner. Upon hearing the learned counsel for the Petitioner as well as Mr. S.P. Wangdi, learned Advocate General assisted by Mr. J.B. Pradhan, learned Government Advocate for the State, we are of the view that this matter can be disposed of finally <u>on</u> its own merit as the questions of law involved in the case in hand is a very simple one, and that being the position, this Writ Petition is finally disposed of with the following Judgment and Order.</p> <p>The Petitioner's grievance is that she</p>	

has been denied the promotion in the post of Upper Division Clerk or its equivalent and

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		<p>her case was not considered against the reserved quota for disabilities of 3 % and she has been deprived of her promotional right granted under the related provisions of Section 32 read with Section 33 of the Persons with Disabilities (Equal Opportunities, etc.) Act, 1995, for short "Disability Act of 1995" as well as the mandates of the Constitution of India thus causing a great injustice to a disable-employee like the Petitioner. Supporting the case of the Petitioner, Dr. Doma T Bhutia, learned counsel for the Petitioner contended that 3 % of the vacancy is reserved for a person with disability in the matter of promotions but, such benefit was/is never afforded to the Writ Petitioner, thus violating the provisions of Articles 14 and 16 of the Constitution of India. The Petitioner also questioned the validity of the impugned office letter of 01.03.2006 as in Annexure P-5, wherein the competent authority had</p>	

communicated its decision on the basis of a representation filed by her on 03.02.2006 for

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		<p data-bbox="414 401 1193 1985">promotion to the post of U.D.C./Upper Division Clerk. In the said representation, the Petitioner sought for relaxation of the Service Rules as she is a physically challenged person and she claimed the appointment under 3% reservation quota. However, the authority informed the Petitioner that the 3 % reservation for persons with disability is for direct recruitment post and there is no reservation in promotion. The learned counsel for the Petitioner went on to interpret the provisions of Section 33 of the Disability Act, 1995 and the reservation policy of Government of India laid down under a related Office Memorandum dated 29.12.2005 as in Annexure P-6, and argued that the Petitioner is entitled for her promotion to the post of U.D.C. under reservation quota for disabled persons.</p> <p data-bbox="414 2058 1193 2180">Mr. S.P. Wangdi, learned Advocate General argued that by virtue of law laid</p>	

down under the Constitution of India, Article

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		<p>16 (4-A) shall not stand on the way of the State, in other words, it shall not prevent the State from making any provision for reservation in the matters of promotion. But, there is no Law which has been enforced in the State of Sikkim pertaining to reservation of disabled quota in the matter of promotion, and apart from that, the reservation policy under the related roster, 3% vacant posts is reserved for disabled persons for direct recruitment. Supporting his arguments, Mr. Wangdi, learned Advocate General <sup>has</sup> drawn our attention to Rule 2 of the Government Notification dated 17.11.2003 as in Annexure P-7 and contended that in terms of the said Rule/Notification 3% horizontal reservation for persons with disabilities is provided in all direct recruitment (emphasis given).</p> <p>Rule 3 (1) of the Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984 speaks about the 50 % by promotion</p> <p>through a limited departmental competitive</p>	

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		<p>examination in the matter of promotion in the post of U.D.C. and its equivalent and persons in Grade IV of the service with four years regular service in that grade is eligible for promotion. At this stage we may recall the arguments of Mr. Wangdi, learned Advocate General that the Petitioner faced departmental competitive examination 3 (three) times, one in 1996, one in 2001 and the other in 2003, which is not controverted by the learned counsel for the Petitioner but, she was declared as unsuccessful in other words, she failed in the examinations and during the relevant period she never claimed the benefit of this 3% quota for disabled persons in the matter of promotion. Very recently, the Petitioner approached this Court thus claiming the alleged benefit which is according to us, she is not entitled for her promotion in the higher post of U.D.C against 3% horizontal reservation for persons with disabilities. So far reservation of posts as contemplated under Disability</p>	

Act, 1995, Section 32 read with 33 of the Act

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		<p>of 1995 speaks about the appointment for persons with disability, and there is no whisper about the reservation of 3 % for promotion. From the plain reading of the Government Notification dated 17.11.2003 as in Annexure P-7 to the Writ Petition, the Sikkim Subordinate (Ministerial and Executive) Service (Amendment) Rules, 1990, and provisions of law laid down under Sections 32 and 33 of the Disability Act of 1995, it has been revealed that there is no 3 % reservation for persons with disability in the matter of promotion. It may be noted that at the time when the Petitioner was declared unsuccessful 3 (three) times in the Departmental examination for promotion to the post of UDC, as highlighted above, she did not claim the <sup>alleged</sup> benefit of 3 % reservation for disability, in the matter of promotion but, now only in the year 2007 she approached this Court for the said reliefs sought for in this Writ Petition.</p>	

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		<p>According to us, Articles 16 (4) and 16 (4-A) of the Constitution of India, do not confer any fundamental rights nor do they imposes any Constitutional duties to the Petitioner in the matter of promotion in the post of U.D.C. under 3 % reservation quota as discussed above, inasmuch as the provisions of law are only in the nature of enabling provision vesting a discretion in the State to consider providing reservation of the circumstances mentioned in those articles so required.</p> <p>For the reasons, observations and discussions made, <u>we are of the view that the Petitioner has no enforceable legal right in the case in hand. In the result, the Writ Petition is devoid of merit and accordingly, it is dismissed but, no order as to costs.</u></p> <p><i>A.N. Ray</i> (A.N. Ray, CJ)</p> <p><i>N.S. Singh</i> (N.S. Singh, J)</p>	