



Order	Order*	Order with Signature	Office Note as to action (if any) taken on Order
	02. 14.5.08	<p>Present: Mr. A. Moulik, Sr. Advocate with Mr. N.G. Sherpa, Advocate for the Petitioner.</p> <p>Mr. J.B. Pradhan and Mr. Karma Thinlay, Govt. Advocates for the State-Respondents.</p> <p>...</p> <p>This case is very similarly circumstanced as the earlier case of S.K. Srivastava because the service charter as on date of both the writ petitioners is dated 13.03.2003 and identically worded; we have dealt with the said document in detail in disposing of the earlier case.</p> <p>However, there are certain dissimilarities also. Srivastava is going to retire within a few months, but Vargese has still 8 years of service left. Srivastava had filed an earlier writ petition in which the document dated 13.3.2003 was accepted as good by both the parties, but as Mr. Moulik assures the Court, no such writ petition was filed by Vargese.</p>	



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		<p>The only other point which we deal with in this case is the prayer for advancement grade, made by Vargese. These requests have been turned down in other cases also including the case of S.K. Srivastava.</p> <p>The representation of Vargese is annexed as Annexure P-6 and is dated 04.07.2007.</p> <p>It is argued that he should be considered for advancement grade without reference to the Sikkim Government Service (Advancement Grade) Rules, 1999 which has been amended from time to time including on 05.07.2004,</p> <p>However, the inapplicability of the advancement grade rules to persons on work-charged establishment was there before 2004 and even from 1999 itself.</p> <p>Rule 2 (2) (f) of the said Rules states that the Rules are not applicable to "persons on work-charged establishment".</p> <p>Mr. Moulik submits that the Rules of 1999 can have no effect on Vargese's case. Vargese became a work-charged employee many years before that, i.e., from 1979/1980.</p>	



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		<p data-bbox="350 384 1182 1037">The validity of retrospective laws, or Rules or service conditions is ultimately a test of reasonableness. In testing such reasonableness in cases such as this, both the contractual nature and the nature of status of a Government employee are to be paid due attention. The attendant circumstances are also to be looked into, for the purpose of passing a just and reasonable order in a writ matter and it should always be remembered that the writ Court is a Court of equity.</p> <p data-bbox="350 1103 1182 1633">We find that from 1979 up to 2007 Vargese has raised no objection. He has 8 more years of service left. He has all along worked with his eyes wide open (or at least his eyes are to be taken as wide open, because ignorance of the law is nobody's excuse) to the rules, showing that he was on work-charge and therefore Advancement Grade Rules, 1999 are not applicable to him.</p> <p data-bbox="350 1700 1182 2040">Numerous persons are likely to be affected if the Court rules now that the advancement grade Rules, 1999 will not apply to work-charged employees who became such before 1999. We are also not aware of any older Rule, prior to 1999, and we were not made aware of</p>	



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	<p>any such older rule, which specifically says that advancement grade will be applicable to the work-charged employees also.</p> <p>In this view of the matter, this writ petition has no legs to stand upon. The representation of the writ petitioner asking for advancement grade is without any substance.</p> <p>As affidavits have not been called for, the statements in the petition cannot be taken to be admitted.</p> <p>The writ petition is dismissed in limine without its admission.</p> <p><i>A.N. Ray</i> (A.N. Ray, CJ)</p> <p><i>A.P. Subba</i> (A.P. Subba, J)</p>	