



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Jurisdiction)

Writ Petition (C) No. 16 of 2008

Manoranjan Dixit,
S/o Shri Udhai Nath Dixt,
PGT Political Science,
Govt. Sr. Sec. School,
Mangalbaria, West Sikkim.

... Petitioner

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok.
2. The Secretary,
Human Resource Development Department,
Government of Sikkim,
Gangtok, East Sikkim.
3. Shri P.S. Saha,
Human Resource Development Department,
Government of Sikkim.

... Respondents

For the petitioner : Mr. B. Sharma, Sr. Advocate with Mr.
J.K. Kharka, Advocate.

For the respondents : Mr. Karma Thinlay, Government Advocate
for the official respondents.

Date of Hearing : 30.07.2009

Date of Judgment : 30.07.2009

Present: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE AFTAB H. SAIKIA
HON'BLE MR. JUSTICE A.P. SUBBA, JUDGE



JUDGMENT AND ORDER (ORAL)


Saikia, CJ

Heard Mr. B. Sharma, learned Senior Counsel assisted by Mr. J.K. Kharka, learned Counsel for the petitioner. Also heard Mr. Karma Thinlay, learned State Counsel, Sikkim for the official respondents.


2. At the very outset, on a plain reading of the instant application, it is found that this application, though registered as a writ petition, has not been filed under appropriate provision of law, that is, this petition ought to have been filed under Article 226 of the Constitution of India seeking a relief whatsoever in the form of issuance of writ of or in the nature of *Certiorari*, *Mandamus*, etc. etc. Rather, *ex facie*, it appears that it is filed under Articles 14, 15 and 16 of the Constitution of India.

3. Be that as it may, by means of this application the petitioner, being a Post-Graduate teacher of Political Science, presently working in the Government Senior Secondary School at Mangalbaria under West District, has alleged that despite being qualified and eligible for promotion/appointment as a Principal of a Senior Secondary School in the State of Sikkim, he has been deliberately and illegally deprived of getting the benefit given to the respondent No. 3 who has been allowed to act as Co-ordinator on

A



promotion to the post of Principal, although the petitioner is similarly situated with the respondent No. 3 and accordingly he has sought the reliefs with the following prayers:

- "A. A rule nisi calling upon the respondent No. 2 to furnish the entire documents of selection process by which annexure - E was notified.
 - B. A rule nisi calling upon the respondent No. 2 to furnish the entire records of selection and posting of respondent No. 3 in the post of Principal and to furnish the entire personal records and Annual Service Report of the petitioner, respondent No. 3 and other incumbents who had been promoted vide annexure - E.
 - C. Issue a writ/order or direction in the nature of certiorari or any other appropriate writ/order or directions quashing the promotion order vide annexure - E.
 - D. Issue a writ/order/direction in the nature of certiorari or any other appropriate writ/order/direction quashing the promotion order given to respondent No. 3 and also incumbents who were promoted vide annexure - E.
 - E. A writ/order/direction to the respondent No. 1 and 2 or each of the respondents to consider the case at par with respondent No. 3 and other incumbents promoted vide annexure- E.
 - F. Issue a writ/order/direction declaring the promotion order of respondent No. 3 and other incumbents who were also promoted vide annexure - E to be null and void.
 - G. Cost of the proceedings.
 - H. Pass such further order/writ/direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case. "
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4. On scrupulous scanning of the averments made in this application as well as the prayer as quoted hereinabove, it would go to show that the petitioner has basically challenged the office order dated 30.01.2008 i.e. Annexure - E as indicated in the above prayer whereby on the basis of interview conducted on 11th, 12th, 13th and 16th April 2007, as many as 8 Post-Graduate teachers were selected as Principal in Senior Secondary Schools against the existing vacancies with immediate effect. Amazingly, although the petitioner has challenged the said office order, for the reasons best known to him, all those 8 persons selected for the post of Principal, being the necessary parties, have not been arrayed as Respondents in this application.

5. At this stage, Mr. Karma Thinlay, the learned State counsel has submitted that the petitioner, being eligible for selection as a Principal, took the interview on two occasions for such selection. Initially in the year 2003, he appeared for such selection but was found to be unsuccessful. Again he took the interview conducted on 11th, 12th, 13th and 16th April, 2007 for selection as Principal and that time also he could not make it. That being the position, according to the State counsel, the petitioner being unsuccessful, cannot be permitted to challenge the impugned office order.



6. That apart, it is further contended by the learned State Counsel that the contentions and averments made in this application as well as the submissions and arguments placed on record on behalf of the petitioner would candidly indicate that the petitioner primarily has no grievance against the respondent No. 3 and the same is evident from the fact that he has challenged the Office Order dated 30.01.2008 i.e. Annexure – E to this application, as reflected in the prayer made to the application itself, without impleading all those candidates who have been selected/promoted to the post of Principal by the impugned Office Order. Under such circumstances, this application may be held as not maintainable for non-joinder of parties.

7. Assuming the petitioner has made a challenge to the promotion/selection of the respondent No. 3, such challenge cannot be entertained in view of the fact that the respondent No. 3 was promoted long back in the year 2004 as Principal along with 11 others vide Office Order dated 13.02.2004 (Annexure – J at page 66 of the Rejoinder filed on behalf of the petitioner). Admittedly, the said Office Order at no point of time has been assailed by the petitioner.


8. Having considered the submissions made on behalf of the petitioner as well as the official respondents and on meticulous study of the entire pleadings, we do find that this application is not



maintainable in absence of all those 8 (eight) selected candidates named in the impugned office order dated 30.01.2008 (Annexure - E to this application) as the petitioner has challenged the selection of those selected candidates as Principals, without impleading them, being the necessary parties, in the present application.

9. Consequently this application stands dismissed. However, considering the facts and circumstances of the case there shall be no order as to costs.

rsr/jks


Judge.


Chief Justice.