



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CIVIL EXTRA ORDINARY JURISDICTION)

DATED: 09-08-2011

CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI,
ACTING CHIEF JUSTICE**

Writ Petition (C) No. 37 of 2009

1. Shri Harka Singh Lama,
Son of Late S. Lama,
resident of Development Area,
Gangtok.
2. Shri James Lepcha,
Son of late D. B. Lepcha,
resident of Development Area,
Gangtok.
3. Shri Deo Kumar Giri,
Son of late Shamsheer Giri,
resident of Development Area,
Gangtok.

... Petitioners.

-versus-

1. The State of Sikkim,
Through the Secretary,
Department of Personnel,
Administrative Reforms & Training,
Government of Sikkim,
Tashiling, Gangtok.
2. The Secretary,
PWD (Building & Housing),
Government of Sikkim,
Gangtok.

... Respondents.

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For the Petitioners : *Ms. Sharmila Lama, Advocate.*

For the State-
Respondents : *Mr. J. B. Pradhan, Addl. Advocate
General with Mr. S. K. Chettri, Asstt.
Government Advocate.*

Writ Petition (C) No. 03 of 2010

1. Shri Lakpa Tamang,
Son of Shri Jit Bahadur Tamang,
a resident of Upper Burtuk,
P.O.: Gangtok, East Sikkim.
2. Shri Nandalall Pradhan,
son of Purna Bahadur Pradhan,
a resident of Aritar,
P.O.: Aritar, East Sikkim.
3. Shri Sing Bir Tamang,
son of Sangkha Bir Tamang,
a resident of Upper Singhik,
P.O.: Mangan, North Sikkim.
4. Shri Padam Bahadur Subba,
son of Ashar Singh Subba,
a resident of Pakyong,
P.O.: Pakyong, East Sikkim.
5. Shri Nil Kumar Khatiwara,
son of Mahadev Prasad Khatiwara,
a resident of Lingee Paiyong,
P.O.: Pagong, South Sikkim.
6. Miss Pranita Rai,
daughter of Jas Bahadur Rai,
a resident of Upper Tadong,
P.O.: Tadong, East Sikkim.
7. Shri Krishna Bahadur Giri,
son of Bhaskar Giri,
a resident of Tumlabong,
P.O.: 32 number, East Sikkim.

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For the State-
Respondents

: *Mr. J. B. Pradhan, Addl. Advocate
General with Mr. S. K. Chettri, Asstt.
Government Advocate.*

Writ Petition (C) No. 30 of 2010

Shri Sonam Rinchen Bhutia,
Son of Late Dawzing Lama,
Resident of Upper Lingdum,
P.O. Dhajay Dara Ranka,
P.S. Ranipul, East-Sikkim.

... Petitioners.

-versus-

1. State of Sikkim,
Through the Secretary,
Department of Personnel, Administrative
Reforms & Training,
Government of Sikkim,
Tashiling, Gangtok, East Sikkim.
2. Buildings & Housing Department,
Through : the Secretary
Government of Sikkim,
Gangtok, East Sikkim.

... Respondents.

For the Petitioner : *Mr. S. S. Hamal, Advocate with Ms.
Sabina Chettri, Advocate.*

For the State-
Respondents

: *Mr. J. B. Pradhan, Addl. Advocate
General with Mr. S. K. Chettri, Asstt.
Government Advocate.*

Writ Petition (C) No. 49 of 2010

Shri Kaziman Sunar,
Son of late Nar Bahadur Sunar,
resident of Santi Nagar, Singtam,
P.O. and P.S. Singtam,
East Sikkim.

... Petitioners.



-versus-

1. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok, East Sikkim.
2. The Secretary cum the Chief Engineer,
Public Health Engineering and Water
Security Department,
Government of Sikkim.
3. The Commissioner cum Secretary,
Department of Personnel, ADM. Reforms,
Training, Public Grievances, Career Option
and Employment Skill Development and
Chief Minister's Self Employment Skill,
Government of Sikkim,
Tashiling Secretariat, Gangtok.

... **Respondents.**

For the Petitioner : *Mr. N. Rai, Senior Advocate with Miss
Jyoti Kharka, Advocate.*

For the Respondents : *Mr. J. B. Pradhan, Addl. Advocate
General with Mr. S. K. Chettri, Asstt.
Government Advocate.*

JUDGMENT

Wangdi, ACJ

1. These Writ Petitions are taken up together as the issues involved for adjudication are the same.

2. In Writ Petition (C) No.37 of 2009, the petitioners are work-charged employees holding the posts of senior work charged



supervisors under the Buildings & Housing Department, Government of Sikkim. The petitioners initially appointed as muster roll employees in the year 1968 got absorbed under the work charged establishment from 01.07.1978 in which category they continued to serve until the petitioner no. 1 retired on 28.02.2010 and the petitioner no. 2 on 31.07.2010. It may be stated that when the writ petition was filed initially before this Court, they were still in service.

3. In the next case, i.e. Writ Petition (C) No.03. of 2010, there are altogether 12 petitioners, who had initially been appointed on muster roll basis in the Engineering Cell of the Human Resource Development Department (earlier Education Department) on varying dates commencing from the year 1980 to 1991. With effect from 31.05.2003 all of them were brought into the ad-hoc category with consolidated salary and continue in that category.

4. In the third case, i.e. Writ Petition (C) No. 30 of 2010, the petitioner is a retired employee with effect from 31.01.2010, having entered into service in the year 1978 on muster roll basis in the Building & Housing Department and later brought into work charged establishment in which category he continued until his retirement in the afternoon of 31.01.2010.

5. In the last case, i.e. Writ Petition (C) No.49 of 2010, the petitioner had been appointed on muster roll basis as a plumber on 24.08.1977 under the sewerage division of the Public Health Engineering and Water Security Department, Government of Sikkim,



respondent no. 2. He was later absorbed under work charged establishment with effect from 03.05.1980 and has continued in that category. He was later brought to perform office work from the year 1983 as a Bill Clerk until the year 1991.

6. The petitioners, in all the above cases, have, *inter alia*, prayed for issue of order/direction declaring that they are entitled to get their services regularised with retrospective effect from the dates of their appointments to the Departments.

7. From the facts and circumstances indicated in the Writ Petitions, it is evident that the petitioners have been languishing in temporary capacities without security of their tenure of services for periods varying from 20 to 42 years. The petitioners have pleaded that they had approached the Government several times earlier for regularisation of their services but unfortunately were not favoured with appropriate responses. It is their case that they have put in sincere and selfless services during their entire careers and, therefore, it was bounden on the part of the State to provide for reasonable reliefs in the form of regularisation of their services in order to enable them to enjoy the benefits of after retirement emoluments.

8. This Court being deeply concerned with the plight of the workers and anxious of their well being after retirement from their jobs, raised certain queries from the State Government in Writ Petition No. 3 of 2010, which is reproduced below:-



**"BEFORE
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

02. 09.03.2010 Present : Mr. A. Moulik, Senior Advocate with Mr. N. G. Sherpa, Advocate for the petitioners.

Mr. J. B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. Santosh Chettri, Assistant Govt. Advocate for the State respondents.

Heard learned Counsels appearing for the parties.

2. Mr. J. B. Pradhan, Addl. Advocate General assisted by Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. Santosh Chettri, Assistant Govt. Advocate on behalf of the State respondents pray for further time to file their counter affidavit.

3. It is submitted by Mr. Pradhan that since the matter needs deeper consideration, time granted may be sufficiently long. I have no hesitation in granting a longer date, as in my view the issue raised in the petition is not so simple or ordinary run of the mill category. It involves the lives and security of a large number of workers who have been languishing in temporary capacities for many years ranging from 10 to 40 years. It is a matter of record that there are other cases also that have been filed in this Court and pending disposal in which the issues raised are very much the same. It is no doubt true that by the judgment pronounced by the Hon'ble Supreme Court in the case of State of Karnataka vs. Uma Devi in the year 2005, it has been settled by a Constitution Bench that regularisation of temporary service other than by means of regular rules cannot be sustained in the eye of law and no such regularisation can be held to be legal. But the Court being aware of the fact that there are many in other parts of the country who are languishing without any security of their tenure directed that the State Governments were at liberty to create certain kind of scheme to ensure that such kind of workers are brought into regular establishment of the Government.

4. While granting 6 weeks' time as prayed for by the State Government to file the counter affidavit, it is made clear that the following specific information also be placed on record in the affidavit in opposition: -

- (i) The number of persons who have been appointed by the Department of H.R.D.D. to posts equivalent to that of the petitioners during the last 10 years.
- (ii) Whether advertisements were published in regard to those posts.
- (iii) To indicate as to whether the cases of the petitioners and others similarly



circumstanced were considered for appointment to those posts or not.

- (iv) Whether any exercise has been taken to find out as to how many workers/employees are/were working under the State Government in temporary capacities either as muster roll employee, worked charge employee, ad-hoc employee etc.
- (v) If not, why not.
- (vi) If such enumeration has been done, whether any scheme has been drawn by the State Government for the regularisation of their services in a phased manner.
- (vii) To what extent has the aforesaid scheme been implemented. This information may be given with specific reference to the different departments where such implementation has been done.

7. The above information are necessary in my view to arrive at an effective adjudication of the matter apart from giving reply to the statements and allegations contained in the writ petition."

9. No doubt the question in paragraph 4 above covered persons, who were not before the Court and were of a general nature but considering the fact that there were 4 Writ Petitions involving several persons serving under different departments of the State Government, it was felt essential to raise them. In response to the above, the State-respondent filed an affidavit ostensibly in compliance to the direction contained in order of this Court dated 09.03.2010. However, on perusal, it is noticed that the answers to the queries are not satisfactory but quite vague except for the answers to the questions (c) and (d). The relevant contents of the affidavit of the Department of Personnel, Adm. Reforms & Training, Government of Sikkim, respondent no. 2, dated 21.08.2010, are reproduced below: -



- "(c) If such enumeration has been done, whether any scheme has been drawn by the State Government for the regularisation of their services in the phase manner.

Ans:- It is submitted that the Department of Personnel, Adm., Reforms & Training has issued Notification No. 137/GEN/DOP, dated 8/7/2008 along with Office Memorandum No. 1443/GEN/DOP, dated 10/7/2008, wherein, the State Government has provided 50% reservation for temporary employees while filling up various posts in the Department. Copies of the Notification bearing No. 137/GEN/DOP, dated 8/7/2008 along with Office Memorandum No. 1443/GEN/DOP, dated 10/7/2008 are annexed hereto and marked as Annexure R-2 and R-3 respectively.

- (d) To what extent has the aforesaid scheme been implemented. This information may be given with specific reference to the different departments where such implementation has been done.

Ans:- It is submitted that the Rule governing 50% reservation for temporary employees while filling up various posts in the department is being implemented as and when vacancies arise. It is further submitted that the Department of Personnel, Adm., Reforms & Training had already issued letters to all Secretaries/Head of Departments requesting them to submit the total number of temporary employees who have been regularised in accordance with Notification No. 137/GEN/DOP, dated 8/7/2008 and Office Memorandum No. 1443/GEN/DOP, dated 10/7/2008.

As per the information received by the Department of Personnel, Adm., Reforms & Training, so far as many as 21 (twenty one) departments have availed benefits provided under the said Notification and Office Memorandum. A total number of 187 temporary employees have been benefitted (regularised) under the said schemes which are as under: -

Group "B"	-	02 nos.
Group "C"	-	123 nos.
Group "D"	-	<u>62 nos.</u>
TOTAL-		<u>187 nos.</u>

Copy of list of departments who have availed benefits under the said notification is annexed herewith and marked as Annexure R-4."

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10. On 19.08.2010, when the matter was taken up for hearing, Mr. J. B. Pradhan, learned Addl. Advocate General, made a submission that independent of what have been stated in the counter affidavits of the State-respondents, the State Government has taken up necessary steps to provide for some relief to all categories of employees



working on temporary basis by collecting the complete data of such categories of employees under the State Government. In other words, the State Government was giving a comprehensive look into the affair to take care of this nature of employees under the Government.

11. This Court is conscious of the present position of law relating to regularisation of services of temporary workers. After the case of **Secretary, State of Karnataka and others v. Umadevi and others** reported in **(2006) 4 SCC 1** the presumed permissibility of regularisation of services of ad-hoc and temporary employees was held to be erroneous. After this decision, the temporary or ad-hoc appointment was permissible only where posts were vacant in the regular establishment and such appointments would also be for limited periods to be followed by recruitment process for appointments on regular basis to those vacant posts. The practice of regularisation of ad-hoc employees was severely deprecated by the Constitution Bench in the case of **Umadevi (supra)**, permanently injuncting unjustified appointments on ad-hoc basis by the Governments. However, in order to take care of those persons, who had been serving in temporary capacities for considerable length of time over 10 years and more, it was clarified as under: -

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R. N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the



union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

12. In the counter affidavit, the State-respondents have filed a copy of the Sikkim State Direct Recruitment (Special Provisions) Rules, 2008 published vide Notification No.137/GEN/DOP dated 08.07.2008, whereby the State-respondents have drawn a scheme in compliance to the directions of the Hon'ble Supreme Court in paragraph 53 above. I may reproduce the rule for convenience, which reads as under : -

**"DEPTT. OF PERSONNEL, ADM, REFORMS, TRAINING,
PUBLIC GRIEVANCES, CAREER OPTIONS &
EMPLOYMENT, SKILL DEVELOPMENT AND CHIEF
MINISTER'S SELF-EMPLOYMENT SCHEME,
GANGTOK**

No. 137/GEN/DOP

Dated 08.07.2008

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Sikkim hereby makes the following rules regulating the direct recruitment to the posts under different services in connection with the affairs of the State; namely: -

Short title, extent and commencement	1.	(1)	These rules may be called the Sikkim State Direct Recruitment (Special Provisions) Rules, 2008.
		(2)	They shall come into force at once.
Definitions	2		In these rules, unless the context otherwise requires:-
		(a)	"Authority", means the State Government through the Secretary In-charge of the Department of Personnel or such other department as the case may be;
		(b)	"direct recruitment", means any recruitment to posts,



			for which applications are invited from fresh candidates and may also include such other category of candidates as may be indicated in such notification for direct recruitment;
		(c)	"employee", means both permanent as well as temporary employee working under the State Government in a department;
		(d)	"Government", means the Government of Sikkim;
		(e)	"Relaxation", means such relaxation in matters of direct recruitment for such category of posts as may be specified in any notification for recruitment and includes relaxation in roster points, age, qualification or experience, etc. to such extent as may be feasible;
		(f)	"temporary employee:", means an employee working temporarily either as ad-hoc or on muster roll's or work charged or as substitute or on contract or on daily wages or on consolidated pay or on co-terminus basis, etc.;
		(g)	"test", means and includes oral or written examination for recruitment or both under these rules.
Special provisions for direct recruitment.	3.	(1)	<p>Notwithstanding anything contained in any other rule for the time being in force, in direct recruitment to posts under different categories of services in the State Government, there may be allowed such relaxation in matters of eligibility criteria for temporary employees, if any, in the Government Department as may be considered expedient.</p> <p>Provided that such relaxation may not be granted as a matter of rule but only to allow candidates with experience and expertise gained during such temporary employment in a job to be able to compete subject to their being found fit in all other respect:</p> <p>Provided further that relaxation may be allowed only in those cases wherever it is found feasible and it shall not be allowed or resorted to in respect of posts requiring specific technical qualification or physical standard.</p>
		(2)	<p>Temporary employees in a Department, if any, subject to their having qualified in the test/interview, will be considered for selection to such number of posts in the concerned department as may be found suitable having regard to their performance in test or in interview including their overall assessment and proficiency:</p> <p>Provided that while considering them for selection to the posts to be filled up, it shall not exceed beyond 50% of the total number of such vacant posts:</p> <p>Provided further that where there is only one post in a department to be filled up by direct recruitment, in all such cases the concerned department shall obtain approval from the appropriate authority for filling up of the post through test from amongst the</p>



			temporary employees of the concerned department, if any, under the provisions of these rules.
		(3)	In all such direct recruitments, the State Government through its concerned department may make such relaxation well in advance in matters of eligibility criteria for the purpose of applying for direct recruitment and in consideration of the performance of such temporary employees in the test/interview, selection shall be made for the posts in the concerned department accordingly.
		(4)	A temporary employee, if any, working in a department will be eligible for applying in respect of post to be filled up by direct recruitment in the same Department in which he or she is working in the same category of post and will be considered for selection subject to their being found eligible, fit and successful in the test under the provisions of these rules.
Rules not in derogation to other Rules.	4.		These rules shall not be in derogation to, but supplemental to the, rules governing various services in the State and the Sikkim Government Establishment Rules, 1974.
Power to interpret.	5.	(1)	If any question arises as to the interpretation of these rules, the same may be decided by the Government duly obtaining legal advice.
		(2)	The Government may also issue instruction or office memorandum from time to time for the purpose of smooth implementation of these rules.
			Sd/- (C. L. Sharma) Special Secretary-DOPART"

13. It may also be stated that on behalf of the respondent no. 1 in Writ Petition (C) No.37 of 2009, an affidavit sworn on 18.11.2010 was filed with the following information when asked of them vide order dated 08.10.2010: -

"3. That in compliance of the aforesaid direction, the replies to the said queries are placed herein below in seriatim: -

(I) It is humbly submitted that as per the information received from various Department by this answering respondent, the total number of temporary employees working in the Government of Sikkim as on 1st October, 2010 are 9,823.

(II) That with regards to the proposal for reliefs that are being worked out, it is submitted that the Government has already taken the following steps: -

(a). One Man Commission was appointed by the Government to look into the matter of regularisation of temporary employees. The major





recommendation of the Commission was that the Government should consider regularising all temporary employees who have completed 10 years of continuous service as on 10.4.2006 as a one time scheme, provided the employees were appointed in duly sanctioned posts.

It is submitted here that most of the 9,823 employees were not appointed in duly sanctioned posts.

(b) Notification No. 137/GEN/DOP dated 8.7.2008 and O.M. No. 1443/GEN/DOP dated 10.7.2008 provides for 50% reservation in vacancies for temporary employees. It also provides age relaxation up to 50 years, waiver in the application of roster point and relaxation in educational requirement except for technical posts. In other words, the Government has been very conscious about protecting the rights of temporary employees by providing them various relaxation while regularising them.

(c) A total number of 195 temporary employees have already been brought under regular establishment till September, 2010 under this scheme. In the near future, the Department of Personnel proposes to obtain Government approval to fill up 50% available vacancies in the post of LDC's from amongst the eligible temporary employees in terms of Notification No. 137/GEN/DOP dated 8.7.2008 and O.M. No. 1443/GEN/DOP dated 10.7.2008.

(d) Besides this, the Government is already providing various benefits to temporary employees :-

(i) The Minimum Wages Act, 1948, has been implemented.

(ii) The Workmen's Compensation Act, 1923 has been implemented and the Secretary Labour Department has been appointed as Commissioner under the said Act.

(iii) All temporary employees on work charge basis are eligible at the time of retirement, for service gratuity @ $\frac{1}{2}$ x last basic pay x number of years of completed service subject to a maximum of 15 years.

(iv) All temporary employees on work charge basis are entitled to medical facilities at par with regular employees.

(v) All temporary employees on work charge basis are eligible for maternity leave of 90 days and M/R employees are entitled to maternity leave of 60 days.

(vi) All temporary employees are also eligible for old age pension after attaining the age of 60 years and grant on medical ground.

It is humbly submitted that at present the aforementioned reliefs are being provided to the temporary employees working in the Government of Sikkim.

(III) Question of non-implementation of the Employees Provident Fund and Miscellaneous Provisions Act 1952.

The Employees Provident Fund Act of 1952 is a Central Act that is implemented through Regional and Sub regional offices. For the State of Sikkim the Regional Office is located at Siliguri with an Enforcement Officer stationed at Gangtok in Development Area. That



In compliance to the order dated 8.10.2010, the address of the Authority under the EPF and Misc. Provident Act, 1952 at Gangtok is furnished as under :-

- Address :-
- (a) Enforcement Officer,
EPF Office,
Development Area,
Gangtok.
 - (b) The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation
Sub-Regional Office, Siliguri
Bhavishya Nidhi Bhawan,
Pradhan Nagar Hill Cart Road,
Siliguri : Darjeeling.

The Department of Personnel has requested the EPF office at Gangtok, vide letter No. 4491/Gen/DOP dated 26/10/2010, to give details of practices followed by other States with regard to EPF status of temporary employees. The Enforcement Officer, District Centre Service, Employees Provident Fund Organization, Gangtok vide letter No. DSC/GTK/SKM/EO/07/41 dated 10.11.2010 have forwarded the queries post by the Additional Secretary, Department of Personnel, Government of Sikkim to the Regional Provident Fund Commission, Employees Provident Fund Organization, Siliguri, District Darjeeling. The answer of such queries is still awaited from the Regional Officer, Siliguri.

It is humbly submitted that further steps, if required under the law, shall be taken after receipt of the above information."

Later, on 11.03.2011, another affidavit was filed on behalf of the respondent no.1 in that very Writ Petition by which Notification No.349/GEN/DOP dated 28.02.2011 was placed on record. By this Notification terminal benefits were provided for temporary employees on daily wages and consolidated pay. The Notification is reproduced below for convenience: -

**"GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, ADM, REFORMS, TRAINING, PUBLIC
GRIEVANCES, CAREER OPTIONS & EMPLOYMENT SKILL DEV. AND
CHIEF MINISTER'S SELF-EMPLOYMENT SCHEME,
GANGTOK**

No. 349/GEN/DOP

Dated 28/2/2011

NOTIFICATION

The Governor of Sikkim is hereby pleased to grant terminal benefits to temporary employees on daily-wages and consolidated pay excluding work-charged and those on contract/time scale, on the condition that their services



shall be terminated at any time without notice with immediate effect as under:-

1. **Terminal Gratuity** - Any temporary government employee who is discharged on account of retrenchment or its declared invalid for further service or who retires on superannuation shall be eligible for gratuity @ of 1/3rd of a month's pay for each completed year of service subject to a minimum of Rs. 5000/- (five thousand).

2. **Death Gratuity** - The family of a temporary government employee who dies while in service shall be eligible for death gratuity in addition to terminal gratuity of Rs. 1000/- (one thousand) for each completed year of service, subject to a minimum of Rs. 5000/- (five thousand).

Those employees who leave voluntarily or are absorbed into regular establishment shall not be entitled to any form of gratuity.

NOTE : The period of 6 months and above shall be reckoned as one year of service.

BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-

(Dipa Basnet)

ADDITIONAL SECRETARY TO THE GOVERNMENT
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING, PUBLIC
GRIEVANCES, CAREER OPTIONS & EMPLOYMENT SKILL DEVELOPMENT
AND CHIEF MINISTER'S SELF EMPLOYMENT SCHEME"

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14. From the above, it is evident that the State-respondents have made efforts to provide relief to all categories of employees which thus far did not exist. This Court is aware of the parameters of its jurisdiction and, therefore, would not embark upon areas, which falls within the domain of executives. No decision is required to be cited on the settled position of law that it is beyond the jurisdiction of this Court to direct the State or its instrumentalities to regularise the services of the temporary and ad-hoc employees. It, at best, can call upon them to consider such possibilities. The issues raised in the present Writ Petitions are relevant for consideration by a welfare State conceived under the scheme of the Constitution.



15. Article 39 of the Constitution of India, falling under Part IV - Directive Principles of State Policy, prescribes amongst others that the citizens, men and women equally, have the right to an adequate means of livelihood. This article can be traced directly to Article 21 of the Constitution of India, which provides for protection of life and personal liberty. Article 37 of the Constitution of India clearly postulates that the provisions contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

16. Having regard to the above position of the law and the Constitution the State Government is expected to respond affirmatively when called upon to give any aid to the suppressed and uncared categories of employees whose services usually go unnoticed.

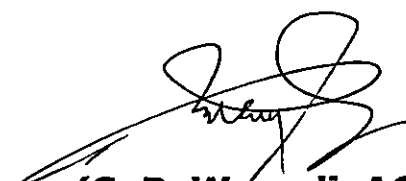
17. In the present cases, it is seen that the State Government has made provisions after retirement benefits in the form of gratuity for work charged employees and for those, who are daily wage earners. It is also seen that opportunity has been provided for those belonging to Class-III and IV categories of temporary employees serving for long periods to be brought into regular establishment vide the Sikkim State Direct Recruitment (Special Provisions) Rules, 2008. These are indeed commendable steps taken by the State-respondents for the amelioration of the temporary employees. However, this Court hopes that the Government shall explore further possibilities of making



additional provisions under either the present Government Pension Scheme or the new Pension Scheme adopted by the Government in order to ensure means of sustenance and medical care for these categories after retirement.

18. At the end, it may be observed that the petitioners are at liberty to approach the Government for appropriate relief or reliefs and the State-respondents may, in their wisdom, consider providing reasonable reliefs in addition to what have been provided already.

19. With the above observations, these Writ Petitions stand disposed of. No order as to cost.


(S. P. Wangdi, ACJ)
09.08.2011

Index : Yes/No

Internet : Yes/No