




Case No.....

Serial No.	Date	Order (s) with Signature (s)
1	2	3
03.	11.11.10	<p style="text-align: center;">BEFORE</p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE MR. JUSTICE P.D. DINAKARAN</p> <p>Present: Mr. B.R. Pradhan, Sr, Advocate with Ms. Pema Yeshey Bhutia, Ms. Yangchen D. Gyatso, Mr. Karma T. Bhutia and Mr. Y. Sharma, Advocates for the petitioners.</p> <p>Mr. Karma Thinlay, Government Advocate and Mr. S.K. Chettri, Asstt. Govt. Advocate for the official respondents.</p> <p>Mr. J.K. Kharka, Advocate for respondents No. 4 and 5</p> <p>Mr. Jorgay Namka, Ms. Zola Megi and Ms. Rinku Chettri, Advocates for respondents No. 6, 7, 11 to 24.</p> <p style="text-align: center;">...</p> <p>The writ petition stands disposed of, vide separate sheets.</p> <p style="text-align: right;"> (P.D. DINAKARAN, CJ) 11.11.2010</p>

rsr/jk



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

DATED : 11.11.2010

CORAM

HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE

Writ Petition (C) No. 43 of 2010

1. Smt. Mingma Sherpa,
Rongyek, East Sikkim.
2. Smt. Purnima Chettri,
31, NH, Tadong, Daragaon,
Gangtok, East Sikkim.
3. Shri Karma Z. Dadul,
Tholong House,
Mangan Bazaar,
North Sikkim.
4. Shri Jigdal Deonzongpa,
Below SNT Weigh Bridge,
Tadong, Gangtok,
East Sikkim.
5. Shri Dhendup Dorjee Lama,
Shanti Kuteer,
Sichey, Gangtok,
East Sikkim.
6. Shri Karchung Bhutia,
Ranipool, Gangtok,
East Sikkim.



7. Shri Suraj Chandra Pradhan,
Shumbuk House,
P.O. Sumbuk,
South Sikkim.
8. Shri Bhim Bdr. Thapa,
Ranka, Malangthang,
East Sikkim.
9. Shri Prakash Chandra Subba,
Deorali Government Quarter,
Beside Women's Hostel,
Deorali, Gangtok, East Sikkim.
10. Shri Binod Kumar Sharma,
Near Bhanu Park, Singtam,
Gangtok, East Sikkim.
11. Shri Krishna Kumar Pradhan,
Upper Majhi Gaon,
Jorethang, South Sikkim.
12. Shri Binoy Sharma,
Sichey, Gangtok, East Sikkim.
13. Ms. K.S.C. Tongden Lepcha,
Adda House,
Geyzing, West Sikkim.
14. Shri Arvind Rai,
Manbir Colony, Lower Burtuk,
Gangtok, East Sikkim.

... **PETITIONERS.**

- Versus -

1. The State of Sikkim,
Through: Chief Secretary,
Government of Sikkim,
Tashiling Secretariat,
Gangtok-737101.



2. Department of Personnel,
Administrative Reforms and Training,
Government of Sikkim,
Gangtok-737 101, Sikkim.
3. The Secretary,
Department of Energy and Power,
Government of Sikkim,
Gangtok-737101, Sikkim.
4. The Chairman,
Sikkim Public Service Commission,
Old West Point School,
Below Private Bus Stand,
P.O. Gangtok-737101, East Sikkim.
5. The Selection Committee,
Through Chairman,
Sikkim Public Service Commission,
Old West Point School,
Below Private Bus Stand,
P.O. Gangtok-737101, East Sikkim.
6. Shri L. P. Chhetri,
Energy and Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
7. Shri Deepak Sewa,
Energy and Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
8. Shri O. N. Sharma (Retd),
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
9. Shri T. R. Dhakal Retd.),
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim.



10. Shri K. N. Sharma,
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
11. Shri Sonam Tshering Bhutia,
Energy & Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
12. Shri N. P. Pandey,
Energy & Power Department,
Government of Sikkim,
Gangtok.
13. Shri Chand Kr. Rai,
Energy & Power Department,
Government of Sikkim,
Gangtok.
14. Shri Suren Rai,
Energy & Power Department,
Government of Sikkim,
Gangtok.
15. Shri Dharni Dhar Koirala,
Energy & Power Department,
Government of Sikkim,
Gangtok.
16. Shri Bishnu Kr. Rai,
Energy and Power Department,
Government of Sikkim,
Gangtok.
17. Shri Pradeep Chhetri,
Energy & Power Department,
Government of Sikkim,
Gangtok.
18. Shri Sonam Wangdi Bhutia,
Energy & Power Department,
Government of Sikkim,
Gangtok.





19. Shri Karma Thendup Lepcha,
Energy & Power Department,
Government of Sikkim,
Gangtok.
20. Shri Hissay Dorjee Bhutia,
Energy and Power Department,
Government of Sikkim,
Gangtok.
21. Shri Sonam Dorjee Bhutia,
Energy & Power Department,
Government of Sikkim,
Gangtok.
22. Smt. Vijay Laxmi Rai,
Energy & Power Department,
Government of Sikkim,
Gangtok.
23. Shri Chandramani Tewari,
Energy & Power Department,
Government of Sikkim,
Gangtok.
24. Shri Norbu Wangdi Bhutia,
Energy and Power Department,
Government of Sikkim,
Gangtok.

... **RESPONDENTS.**

- For the petitioners : Mr. B.R. Pradhan, Sr. Advocate with
Ms. Pema Yeshey Bhutia, Ms.
Yangchen D. Gyatso, Mr. Karma T.
Bhutia and Mr. Y. Sharma,
Advocates.
- For the respondents : Mr. Karma Thinlay Namgyal,
Government Advocate and Mr. S.K.
Chettri, Asstt. Govt. Advocate for
official respondents No. 1, 2 and 3.



Mr. J.K. Kharka, Advocate for respondents No. 4 and 5

Mr. Jorgay Namka, Ms. Zola Megi and Ms. Rinku Chettri, Advocates for respondents No. 6, 7, 11 to 24.

JUDGEMENT

DINAKARAN, CJ

The petitioners are working as Assistant Engineers under respondent No. 3, Department of Energy and Power, Government of Sikkim. They are challenging the promotion of respondents No. 6 to 18 to the post of Divisional Engineer in the same Department, on officiating capacity, by Office Order dated 23.06.2010 based on the seniority fixed by proceedings dated 02.02.2007 of the respondent No. 2, Department of Personnel, Administrative Reforms and Training, Government of Sikkim.

2. Concededly the said seniority list dated 02.02.2007 of the respondent No. 2, was challenged before this Court in W.P.(C) No. 40 of 2009 by similarly placed petitioners; and this Court by Order dated 16.06.2010 dismissed the said writ petition upholding the seniority list dated 02.02.2007 placing reliance on the power of the Government under Rule 7 (1) (a) of Sikkim



State Engineering (Civil, Electrical and Mechanical) Services Rules, 1989, (for short, 'the Service Rules'), which provides the power of relaxation to the Government. The relevant portion of the said Order dated 16.06.2010 reads as hereunder: -

"6. Petitioners do not dispute that power of relaxation was, in fact, exercised by Government in relation to direct recruitment quota for regularisation of petitioners, but they contend, as was the requirement of Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules, they were selected by Commission after holding interview and accordingly, they should be deemed to be direct recruits. In other words, petitioners contend that relaxation was to avoid offering of the direct recruit quota to people other than petitioners. It was submitted that, therefore, it should be deemed in law that petitioners were direct recruits and, therefore, inter-se-seniority between them and private respondents is required to be determined in accordance with Clause (e) of Rule 4 of the Seniority Rules.

7. It is true that petitioners were interviewed by Commission before they were recruited. It is also true that petitioners were recommended by Commission for being recruited, which suggests they were selected. At the same time, acceptance of the recommendation of Commission resulted in recruitment of petitioners. The question, however, is, taking those into account, can it be said that petitioners were direct recruits in terms of Clause (e) of Rule 4 of the Seniority Rules? Fact remains, while exercising power under Rule 30 of the Service Rules, Government relaxed the whole provision relating to method of recruitment contained in Rule 7 of the Service Rules, and not only Clause (a) of Sub-Rule 1 thereof, with a view to regularise petitioners, who were then work-charged Assistant Engineers, as Assistant Engineers in the service in consultation with Sikkim Public Service Commission. Therefore, the whole method prescribed in Rule 7 of the Service Rules was relaxed and altered for the purpose of utilizing the quota available for direct recruits to regularise petitioners in consultation with Sikkim Public Service Commission. Accordingly, interview of petitioners by Sikkim Public Service Commission should be deemed to facilitate such consultation and not selection. At the same time, recruitment pursuant to recommendation of Sikkim Public Service Commission should be deemed to be the outcome of such consultation and cannot be treated as appointment pursuant to selection by Sikkim Public Service Commission. Furthermore, all the existing work-charged Assistant Engineers were recommended in course of such consultation. Petitioners were, thus, not



recruited as direct recruits in terms of Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules and accordingly, they cannot be treated as direct recruits in terms of Clause (e) of Rule 4 of the Seniority Rules. In the circumstances, Clause (f) of Rule 4 of the Seniority Rules applied to the case of petitioners, which provides that seniority of persons, who are appointed to the service by a method other than by selection or by examination shall be determined ad-hoc by the State Government by a special order and admittedly such an order was passed finally by the State Government upon acceptance of the report of the One man Commission. There is, therefore, nothing further to be done in the Writ Petition."

3. However, Mr. Bhaskar Raj Pradhan, learned Senior Counsel appearing for the petitioners contends that -

- (i) the present petitioners are not parties to the said writ petition;
- (ii) the respondent No. 2, Department of Personnel, Administrative Reforms and Training, Government of Sikkim while fixing the seniority by proceedings dated 02.02.2007 has not assigned any special reason by passing a special order as required under the Service Rules; and
- (iii) in any event, the earlier Order dated 16.06.2010 of this Court is not binding on this Court to entertain the present writ petition.

4. Per contra, Mr. Karma Thinlay Namgyal, learned Government Counsel and Mr. Jorgay Namka, learned Counsel appearing for the contesting respondents No. 6, 7, 11 to 24 invited my attention to the fact that even though, the petitioners are not party to the earlier writ petition i.e. W.P.(C) No. 40 of



2009, the similarly placed petitioners who filed the said writ petition have already preferred a SLP before the Apex Court, namely, SLP No. 26597/2010, in which the Apex Court was pleased to issue notice to the contesting respondents, namely, respondents No. 6 to 18 herein.

5. In that view of the matter, I am of the considered opinion that the judicial discipline requires to permit the petitioners to move the Apex Court and raise all the submissions including that are raised here in and also to challenge the reasons that weighed by the learned Judge in the Order dated 16.06.2010, if they are so pleased. Therefore, suffice it to, without expressing any opinion on the rival contention of the parties to dispose of the present writ petition, giving liberty to the petitioners as well as the contesting respondents to agitate their respective claims before the Apex Court either impleading themselves in the said SLP No. 26597/2010 or work out their remedy in the manner known to law.

The writ petition is disposed of accordingly. However, no costs.


(P.D. DINAKARAN)
CHIEF JUSTICE
11.11.2010

Index : Yes/~~No~~

Internet : Yes/~~No~~

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