



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

**Writ Petition (C) No. 39 of 2009**

Shri Keshore Bahadur Chettri,  
S/o Late K. S. Chettri,  
R/o 5<sup>th</sup> Mile, Tadong, Gangtok, East Sikkim,  
P.O. Daragaon, P.S. Ranipool, East Sikkim-737102.  
Assistant Geologist,  
Department of Mines, Minerals & Geology,  
Government of Sikkim.

... **PETITIONER.**

**- Versus -**

1. The State of Sikkim,  
Through the Chief Secretary,  
Government of Sikkim,  
Tashiling Secretariat,  
Gangtok, East Sikkim - 737101.
2. The Department of Personal, Administration,  
Reforms & Training, Public Grievances,  
Career Options, Employment Skill  
Development and Chief Minister's Self  
Development Scheme,  
Government of Sikkim,  
Tashiling Secretariat,  
Gangtok, East Sikkim - 737101,  
Through its Secretary
3. The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim - 737101,  
Through its Secretary.

... **RESPONDENTS.**

4. Shri Dorjee Dadul (Retired Secretary),  
The then Secretary of Mines & Geology Deptt.,  
Kazi Road, P.O. and P.S. Gangtok,  
East Sikkim - 737101.
5. Shri Tshering Tashi,  
Director,  
The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim - 737101.

  
for.



6. Shri K. D. Bhutia,  
Additional Director,  
The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim – 737101.
7. Shri A. K. Sharma,  
Joint Director,  
The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim – 737101.
8. Shri Upen Silal,  
Joint Director,  
The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim – 737101.
9. Shri G. C. Khanal,  
Joint Director,  
The Department of Mines, Minerals & Geology,  
Government of Sikkim,  
Below Tashiling Secretariat,  
Gangtok, East Sikkim – 737101.

... **PROFORMA RESPONDENTS.**

**For the Petitioner** : Mr. A. K. Upadhyaya, Senior Advocate  
with Mr. Dhurba Tewari and Mr. Thupden  
G. Bhutia, Advocates.

**For the Respondents** : Mr. J. B. Pradhan, Addl. Advocate  
General with Mr. Karma Thinlay  
Namgyal, Govt. Advocate and Mr.  
Santosh K. Chettri, Asstt. Govt. Advocate  
for the respondent nos.1, 2 and 3.

Mr. N. Rai, Senior Advocate with Ms.  
Jyoti Kharka and Ms. Sabina Chettri,  
Advocates for respondent nos. 5 to 9.

**BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.**

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*Date of Hearing: 16.06.2010.*

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***Date of Judgment: 16.06.2010.***

**J U D G M E N T ( O R A L )*****Ghosh, CJ.***

The subject matter of challenge in the writ petition is the charge sheet dated 29<sup>th</sup> October, 1993. One of the contentions is that the charge framed there under is vague. The other is that the said charge sheet, having not resulted in an effective decision even after lapse of almost 17 years, has become stale.

2. Facts of the case, to which there appears to be no dispute, are that the charge sheet was enquired into by an Enquiry Officer, who, in his enquiry report dated 5<sup>th</sup> July, 1994, absolved the petitioner of the charge framed in the charge sheet. Report of the Enquiry Officer dated 5<sup>th</sup> July, 1994 was not accepted by disciplinary authority. Disciplinary authority remanded the enquiry to the same Enquiry Officer. The said Enquiry Officer, however, refused to enquire the matter once again. Disciplinary authority then appointed another Enquiry Officer. He enquired into the charge and submitted an enquiry report dated 17<sup>th</sup> March, 1997 to the disciplinary authority. By the said enquiry report, Enquiry Officer opined that the charge stands true. Accepting the said enquiry report, disciplinary authority passed a punishment order dated 12<sup>th</sup> May, 1998 imposing penalty of withholding 5 increments with cumulative effect. By a separate order dated 7<sup>th</sup> September, 1998 absence of the petitioner, which was alleged in the charge sheet as unauthorised absence, was treated as dies non without forfeiting the past service. In a departmental appeal those two orders were challenged by petitioner. Chief Secretary of the State purporting to exercise appellate power by an order dated 19<sup>th</sup>



March, 1999 set aside the enquiry as well as the punishment order, but at the same time remitted the matter for conducting a fresh enquiry in accordance with rules. Thereafter, a fresh enquiry was held by a fresh Enquiry Officer, who in his report dated 8<sup>th</sup> December, 2000 reported that the charge stands proved. Acting on the said report, disciplinary authority passed an order dated 25<sup>th</sup> May, 2001, thereby imposing penalty to the effect that the period of absence, which was alleged to be unauthorised in the charge sheet, to be treated as dies non and also to be treated as an interruption of service for the purpose of increments, leave, pension, etc. and the entire past service of the petitioner shall stand forfeited. The said order became subject matter of challenge in a writ petition filed by petitioner in this Court. The said writ petition was disposed of by a judgment and order dated 18<sup>th</sup> October, 2001, whereby punishment order dated 25<sup>th</sup> May, 2001 was quashed and the orders passed earlier by disciplinary authority dated 12<sup>th</sup> May, 1998 and 7<sup>th</sup> September, 1998, which had been set aside by the Chief Secretary, were revived. Challenging the said order of this Court dated 18<sup>th</sup> October, 2001, writ petitioner approached the **Hon'ble Supreme Court**. **Hon'ble Supreme Court** by its judgment and order dated 16<sup>th</sup> February, 2006, set aside the judgment and order dated 18<sup>th</sup> October, 2001, all enquiry reports and punishment orders passed against petitioner, but revived the memorandum of charge sheet dated 29<sup>th</sup> October, 1993. By its judgment and order dated 16<sup>th</sup> February, 2006, **Hon'ble Supreme Court** granted liberty to the State Government to hold a fresh departmental enquiry in accordance with the provisions of the applicable rules and the



principles of natural justice and to take any action as permissible in law.

3. As a result of the judgment and order of the **Hon'ble Supreme Court**, the slate stood clean except the charge sheet dated 29<sup>th</sup> October, 1993. Until presentation of the present writ petition, which was presented on 30<sup>th</sup> November, 2009, no step was taken by the State Government to exercise liberty as was granted by **Hon'ble Supreme Court**.

4. In as much as, Hon'ble Supreme Court revived the charge sheet dated 29<sup>th</sup> October, 1993, I do not think that it is open to petitioner in this writ petition to contend that the charge contained in the said charge sheet is vague, in as much as, it must be deemed that the said contention was raised but rejected by **Hon'ble Supreme Court**. In view of revival of the charge sheet dated 29<sup>th</sup> October, 1993, as late as on 16<sup>th</sup> February, 2006 by **Hon'ble Supreme Court**, it must be deemed that delay from 29<sup>th</sup> October, 1993 until 16<sup>th</sup> February, 2006 in reaching the said charge sheet dated 29<sup>th</sup> October, 1993 to its logical conclusion is not open to challenge. Fact, however, remains that after 16<sup>th</sup> February, 2006, no step was taken to reach the said charge sheet to its logical conclusion as admittedly, State Government did not take any step in that direction until 30<sup>th</sup> November, 2009. Question is can this delay be said to be such fatal that the Court can quash the charge sheet as stale and all further proceedings thereon? In view of the pronouncement of **Hon'ble Supreme Court**, it must be deemed that the charge sheet, though dated 29<sup>th</sup> October, 1993, but it got its life only on 16<sup>th</sup> February,


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2006. Three years and ten months delay in taking a charge sheet to its logical conclusion in a disciplinary proceeding is not fatal. Similarly, non exercise of liberty granted by **Hon'ble Supreme Court** within three years and ten months is also not fatal. Therefore, there is no scope of interference in the writ petition and to grant relief, as claimed by the petitioner in the writ petition.

5. However, having regard to the fact that the matter is pending since 29<sup>th</sup> October, 1993, and petitioner is going to retire in the month of October, 2010, in the fitness of the case, it would be appropriate to issue a direction upon the State Government to conclude the disciplinary proceedings pursuant to the said charge sheet, in terms of the judgment and order of **Hon'ble Supreme Court** as quickly as possible, but not later than 25<sup>th</sup> September, 2010. With such direction, the writ petition is disposed of.

6. It is made clear that it shall be open to the petitioner to take such recourse to law as he may be advised if he is aggrieved by the outcome of the disciplinary proceedings.

  
Chief Justice  
16.06.2010