



F.B.

## IN THE HIGH COURT OF SIKKIM AT GANGTOK

### Writ Petition (C) No. 27 of 2009

1. Dr. Mechung Bhutia,  
S/o Late Karma Bhutia,  
Resident of Martam, P.O. Nazitam,  
East Sikkim-737134.
2. Dr. Tashi Wangchuk Bhutia,  
S/o C.C. Bhutia,  
Near Food Godown,  
R/o Rhenock Bazar,  
P.O. Rhenock, East Sikkim-737133.
3. Dr. Ugen Gyatso N. Bhutia,  
S/o D.T. Bhutia,  
R/o Namampa Residence,  
Opposite Rahul Tyres, Tadong Bazar,  
P.O. Daragaon,  
East Sikkim-737102.

... Petitioners

-Versus-

1. The State of Sikkim,  
represented by and through  
the Secretary, Department of Personnel  
Administrative Reforms & Training,  
Government of Sikkim,  
Tashiling Secretariat,  
P.O. Tashiling Secretariat,  
Gangtok, East Sikkim.
2. The Secretary,  
Sikkim Public Service Commission,  
Government of Sikkim  
Gangtok, East Sikkim.
3. Dr. Ruchi Chettri,  
Central Referral Hospital,  
5<sup>th</sup> Mile, Tadong  
East Sikkim.



4. Dr. Tenzing Choden,  
R/o Kazi Road,  
Gangtok, East Sikkim.
5. Dr. Ambika Rai,  
R/o Balwakhani,  
Gangtok, East Sikkim.
6. Dr. Amrita Manger,  
Central Referral Hospital,  
5<sup>th</sup> Mile, Tadong, East Sikkim.
7. Dr. Smriti Rai,  
Central Referral Hospital,  
5<sup>th</sup> Mile, Tadong, East Sikkim.
8. Dr. Tshering Wangchuk,  
Office of Chief Secretariat,  
Gangtok, East Sikkim.
9. Dr. Chungsang Ongmu,  
D/o Shri T.T. Bhutia, A.D.,  
A.A.T.I., S.T. Lepcha Marg,  
Gangtok, East Sikkim.
10. Dr. Shrijana Gurung,  
R/o District Court Road,  
Sichey, Gangtok, East Sikkim.
11. Dr. Roshni Sharma,  
Health Care, Human Service and  
Family Welfare Department,  
Gangtok, East Sikkim.
12. Dr. Palmu Chukey Rai,  
R/o Below A.G. Office,  
Gangtok, East Sikkim.
13. Dr. Srijana Pradhan,  
R/o Development Area,  
Gangtok, East Sikkim.
14. Dr. Bhawana Pradhan,  
H.R.D. Department,  
Government of Sikkim,  
Gangtok, East Sikkim.



15. Dr. Bhandana Pradhan,  
R/o Melli Bazar,  
South Sikkim.
16. Dr. Tashi Pegey Chhopel,  
R/o Kazi Road, Gangtok,  
East Sikkim.
17. Dr. Chimi Plamu Theengh,  
R/o Tamang Gumpa, Sichey,  
East Sikkim.
18. Dr. Manju Shree Thapa, Manager,  
Development Area,  
Gangtok, East Sikkim.
19. Dr. Manisha Rai,  
R/o Nam Nang Road,  
Rai Bas, Gangtok, East Sikkim.
20. Dr. Pesona Grace Lucksom,  
R/o Pakyong, East Sikkim.
21. Dr. Upashna Gurung,  
R/o Krishi Bhawan,  
Tadong, East Sikkim.
22. Dr. Upasana Lungun Rai,  
R/o Diesel Power House,  
Gangtok, East Sikkim.
23. Dr. Poonam Shilal,  
R/o Forest Colony Road,  
Gangtok, East Sikkim.
24. Dr. Arati Diyali,  
M.G. Marg, Gangtok, East Sikkim.
25. Dr. Sunu Hangma Subba,  
R/o Diesel Power House Road,  
Gangtok, East Sikkim.
26. Dr. Leezum Foning Lepcha,  
R/o Pani House,  
Below Shiva Mandir,  
Gangtok, East Sikkim.



27. Dr. Patrika Rai,  
West Sikkim.

28. Dr. Deepa Mala Subba,  
P.O. Daramdin,  
West Sikkim.

29. Dr. Prabhat Rai,  
Chumbung Busty  
P.O. Pellingm West Sikkim.

30. Dr. Dina Sundas,  
S.T.N.M. Hospital,  
Gangtok, East Sikkim.

... Respondents

**Writ Petition (C) No. 35 of 2009**

Dr. Anup Kharel,  
S/o Shri Daya Ram Kharel,  
Presently working as M.O.,  
Rangpo P.H.C. under N.R.H.M.,  
Rangpo, East Sikkim.

... Petitioner

-Versus-

1. The State of Sikkim,  
represented by and through  
the Secretary, Department of Personnel  
Administrative Reforms & Training,  
Government of Sikkim,  
Tashiling Secretariat,  
P.O. Tashiling Secretariat,  
Gangtok, East Sikkim.

2. The Secretary,  
Sikkim Public Service Commission,  
Government of Sikkim  
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D/o Shri T.T. Bhutia, A.D.,  
A.A.T.I., S.T. Lepcha Marg,  
Gangtok, East Sikkim.
10. Dr. Shrijana Gurung,  
R/o District Court Road,  
Sichey, Gangtok, East Sikkim.
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Health Care, Human Service and  
Family Welfare Department,  
Gangtok, East Sikkim.
12. Dr. Palmu Chukey Rai,  
R/o Below A.G. Office,  
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13. Dr. Srijana Pradhan,  
R/o Development Area,  
Gangtok, East Sikkim.



14. Dr. Bhawana Pradhan,  
H.R.D. Department,  
Government of Sikkim,  
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Chumbung Busty  
P.O. Pellingm West Sikkim.

30. Dr. Dina Sundas,  
S.T.N.M. Hospital,  
Gangtok, East Sikkim.

... Respondents

**For the petitioners :** Mr. A. Moulik, Senior Advocate with  
Mr. N.G. Sherpa, Ms. K.D. Bhutia  
and Mr. Manish Kr. Jain, Advocates.

**For the respondents :** Mr. J.B. Pradhan, Additional Advocate  
General, Sikkim with Mr. Karma Thinlay,  
Government Advocate, Mr. S.K. Chettri,  
Assistant Government Advocate for the  
official respondents.

**Date of Hearing : 29.03.2010**

**Date of Judgment : 29.03.2010**



**Present: HON'BLE THE CHIEF JUSTICE  
DR. JUSTICE AFTAB H. SAIKIA**

**JUDGMENT AND ORDER (ORAL)**

***Dr. Saikia, CJ***

Head Mr. A. Moulik, learned Senior Counsel assisted by Mr. N.G. Sherpa, Ms. K.D. Bhutia and Mr. Manish Kr. Jain, learned Counsel appearing for the petitioners.

2. Also heard Mr. J.B. Pradhan, learned Additional Advocate General with Mr. Karma Thinlay and Mr. S.K. Chettri, learned State Counsel, Sikkim representing the official respondents. None appears for the private respondents.

3. Since both the writ petitions, being W.P. (C) No. 27 of 2009 and W.P.(C) No. 35 of 2009, raise the common question of law based on almost similar and identical facts situation, both the matters have been taken up together for admission hearing.

4. Having heard the learned Counsel for the petitioners as well as the learned Additional Advocate General, this Court proposes to dispose of both the writ petitions today at the admission stage itself.





5. All the 4 (four) petitioners in both these writ petitions, being qualified and eligible candidates for the appointment to the posts of General Duty Medical Officer (GDMO)/Medical Officer pursuant to the advertisement dated 01.03.2008 published in Sikkim Herald (Classified) on 06.03.2008, took the Written Test and Viva-voce held by the Sikkim Public Service Commission (SPSC) on 7<sup>th</sup> and 9<sup>th</sup> July, 2008 and 13<sup>th</sup> and 14<sup>th</sup> November, 2008 respectively. A Select List in order of merit containing the names of 28 selected candidates i.e. the respondent Nos. 3 to 30 in both the writ petitions, was published on 24.11.2008. Having not found their names in the said Select List, the petitioners have approached this Court by initiating these 2 (two) writ proceedings with the prayers as recorded hereinbelow.

(a) WP (C) 27 of 2009 registers the prayers as follows:

“In the circumstances it is prayed that this Hon’ble Court may be pleased to issue:-

(a) A Rule upon the respondents and each of them to show cause as to why the respondents shall not act as per the guideline 3.2.3(2) of the Notification No. 98/GEN/DOP dated 15/11/03 (Annexure-5) by allocating 28 advertised posts strictly in accordance with Model 100 Point Roster and after hearing the parties to make the Rule absolute;

(b) A writ or order or a direction to the respondents to follow and give full effect



to the guideline 3.2.3(2) of the Notification No. 98/GEN/DOP dated 15.11.2003 by allocating 28 advertised posts strictly in accordance with Model 100 Point Roster;

- (c) A writ or order or a direction or declaration that the respondents shall allocate at least 6 posts out of 28 to the ST candidates and also at least 6 UR posts out of 28 advertised posts for the petitioners;
- (d) A writ of or in the nature of Mandamus commanding the respondents to cancel/revoke the final result declared on 24.11.2008 by affixing on the notice board of the office of the respondent No. 2;
- (e) A writ or order or direction or declaration that the respondents should strictly follow the mandates of the Apex Court to fill up vacancies reserved and unreserved at the ratio of 50:50;
- (f) A writ or order or a direction or declaration that the petitioner shall be appointed in the post meant for ST/UR against the advertisement dated 1/3/2008 and hence to direct respondents to issue appointment orders to them if they are found fit;
- (g) A stay of operation of the final result of the examination dated 24.11.2008 conducted in pursuance to the advertisement (Annexure - 7) and issuing any appointment order;
- (h) Costs of the proceedings;
- (i) Any other order/orders/direction/directions/relief/reliefs which are found deemed fit and proper in the facts and circumstances of the case."



(b) In WP (C) No. 35 of 2009, the following prayers have been made:

“In the circumstances it is prayed that this Hon’ble Court may be pleased to issue:-

- (a) A Rule upon the respondents and each of them to show cause as to why the respondents shall not act as per the guideline 3.2.3(2) of the Notification No. 98/GEN/DOP dated 15.11.03 (Annexure-3 (Colly)) by allocating 28 advertised posts strictly in accordance with Model 100 Point Roster and after hearing the parties to make the Rule absolute;
- (b) A writ or order or a direction to the respondents to follow and give full effect to the guideline 3.2.3(2) of the Notification No. 98/GEN/DOP dated 15.11.2003 by allocating 28 advertised posts strictly in accordance with Model 100 Point Roster;
- (c) A writ or order or a direction or declaration that the respondents shall allocate at least (1) UR post for the petitioner out of (6) unadvertised UR posts from 28 advertised posts of other categories of GDMO/Medical Officer;
- (d) A writ of or in the nature of Mandamus commanding the respondents to cancel/revoke the final result declared on 24.11.2008 by affixing on the notice board of the office of the respondent No. 2;
- (e) A writ or order or direction or declaration that the respondents should strictly follow the mandates of the Apex Court to fill up vacancies reserved and unreserved at the ratio of 50:50;



- (f) A writ or order or a direction or declaration that the petitioner shall be appointed in the post meant for UR against the advertisement dated 1/3/2008 and hence to direct respondents to issue appointment order to him if he is found fit;
- (g) A stay of operation of the final result of the examination dated 24.11.2008 conducted in pursuance to the advertisement (Annexure - 5) and from issuing any appointment order;
- (h) Costs of the proceedings;
- (i) Any other order/orders/direction/directions/relief/reliefs which are deemed fit and proper in the facts and circumstances of the case."

6. It is pleaded by the 3 (three) petitioners in WP (C) No. 27 of 2009, being the members of Scheduled Tribe from the 'Bhutia Community' and the lone petitioner in WP (C) No. 35 of 2009, being a member of Unreserved category from 'Kharel (Bahun) Community', that there is a flagrant violation of application of Model 100 Point Roster in issuing the advertisement dated 01.03.2008 as there was no proper reservation quota allocated for Scheduled Tribe and Unreserved categories. According to the petitioners, there should have been at least 6 (six) posts reserved for Unreserved category and 6 (six) posts reserved for Scheduled Tribe Community, out of which 3 (three) posts ought to have been



again for reserved category of Scheduled Tribe (Women). It is further alleged that the advertisement itself did not register any compliance of the Government Notifications dated 15.11.2003 and 17.11.2003 which notify specifically the reserve category in the Model 100 Point Roster. Basically, they are aggrieved by the vacancy position shown in the advertisement dated 01.03.2008, which runs as follows:

“ .....

5. No. of vacancies	Sl. No.	Category	No. of Post
	1.	ST	2
	2.	ST (Women)	6
	3.	ST (Sports person & Artisan of excellence)	1
	4.	MBC	6
	5.	MBC (Women)	6
	6.	OBC (Women)	3
	7.	SC	2
	8.	SC (Women)	1
	9.	U.R.	1
		Total	28 ”

7. Expressing discordant views, Mr. Pradhan, the learned Additional Advocate General has submitted that –

(i) firstly, the petitioners, having participated in the entire selection process by appearing in both the written and viva-voce tests and having found not suitable for appointment, cannot be allowed to challenge the selection process of 28 candidates i.e. respondent Nos. 3 to 30 much after the



announcement of the result by way of publishing the Select List in order of merit on 24.11.2008;

(ii) secondly, before taking part in the selection process, the petitioners did not challenge the advertisement dated 01.03.2008 alleging such violation of Model 100 Point Roster. That being so, these two writ petitions are liable to be dismissed at the admission stage itself.

8. Pertinent to mention herein that a case precisely of similar nature, being Writ Petition (C) No. 29 of 2008 (Dr. Hemta Pradhan & Others vs. State of Sikkim & Others) filed on 29.11.2008, much before the initiation of these two writ petitions, was dismissed by this Court on 17.03.2010. It is to be noted that during the course of hearing of that writ petition, this Court on 15.09.2009 felt that the case of the 4 (four) petitioners therein might be considered by the Government of Sikkim by creating necessary posts as a special case for those petitioners to which the Government of Sikkim responded positively and with nice gesture to create those posts as desired by this Court.

9. In the said case, this Court also observed that there was the urgent necessity of improvement of the Public Health Care Service under the Government Policy for "Health for All"



and for such purpose the Government should take all necessary steps to create adequate infrastructure including appointment of more Doctors and increase the manpower so that the people of Sikkim would get the best medical and health care.

**10.** In paragraphs 30 and 31 of the said Judgment, the Court observed as under:

**“30.** Keeping in view the sincerity and gesture expressed by the respondent No. 1 to appoint these five candidates including the petitioners herein as named above, inspite of dismissal of this writ petition for the reasons indicated above, this Court hopes and trusts that the State-respondents shall proceed and act in accordance with their own statement, commitment and submission made in those paragraphs as reproduced hereinabove and take necessary action to appoint these five persons hereinabove including Dr. Kalyan Chandra Dahal, the writ petitioner in W.P.(C) No. 28 of 2008 at an earlier possible date along with other 28 persons/respondent Nos. 3 to 30.

**31.** Pertinent to notice herein that Article 25 of the Universal Declaration of Human Rights, 1948 provides that:

“Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services, and the right to security in the vent of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.”



The applicability of such provision has been envisaged in Article 21 of the Constitution of India, i.e. "No person shall be deprived of his life or personal liberty except according to procedure established by law" which has also extended to right to health. That being so, be it mentioned herein that it is the immediate need and urgent necessity to implement the Government policy for "Health for All". Hence Health Care Services in the country in general and in Sikkim in particular, have to be taken, expanded and improved on priority basis and the State Government shall take all necessary actions to give more emphasis and importance in the health service sector by creating adequate infrastructure for such purposes including appointment of more Doctors and increase in manpower so that people of Sikkim could get best medical care. Needless to say that our Nation's prosperity, growth and development depend on health of every individual citizen."

11. In view of the above observation, this Court is of the view that since the factual scenario as well as the question of law involved in these two writ petitions are being similar and identical of the above mentioned case, the instant writ petitions are squarely covered by the decision pronounced on 17.03.2010 in WP (C) No. 29 of 2008 and as such the consideration of the case in hand on merit would be otiose.

12. Nevertheless, in the opinion of the Court, for securing ends of justice, it would be proper and appropriate to





dispose of these writ petitions in the backdrop of those observations made at paragraphs 30 and 31 as quoted above.

**13.** It is important to record herein that right to health care and health equity and justice are certainly a much-needed exercise to be undertaken by the concerned Authorities. It is well said by Sir Walter Scott that "All health is better than wealth".

**14.** In a socio-economic Welfare State, health-care delivery system is needed to be improved and implemented in the right earnest. "Health for All" stands to achieve this goal.

**15.** Be it to mention that "Health for All" movement was undertaken by the World Health Organization (WHO) in 1977 with a policy that by the year 2000 all the people of the world would lead a socially and economically productive life and in 1981, the World Health Assembly (WHA) unanimously adopted a Global Strategy for "Health for All" by the year 2000. "Health for All", according to WHO, means that resources for health are evenly distributed and that essential health care is accessible to everyone. It also means that health begins at home, in schools, and at the workplace, and that people use better approaches for preventing illness and alleviating unavoidable disease and disability. It means that people

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recognize that ill-health is not inevitable and that they can shape their own lives and the lives of their families, free from the avoidable burden of disease.

**16.** In order to achieve this Global Strategy of "Health for All", it is the need of the hour to improve the infrastructure of the entire Health Care Services in the country in general and in the State of Sikkim in particular.

**17.** Needless to say, a universal health-care delivery mechanism has been a major challenge before the Authorities. Of bigger concern is that the rural health-care front, as it appears, has suffered a lot due to decades of neglect and apathy. However, in the recent years, there has been some improvement though, especially after the launching of various schemes including the National Rural Health Mission. One must be aware of the fact that a majority of our rural populace hardly have any access to health-care facilities. Even where there are hospitals, they serve little purpose due to lack of basic infrastructure and manpower. This is essential for bringing the entire populace under standardised medical care, and can be achieved only when the Government gives the matter precedence.



17. In Sikkim, as has been submitted, the position is much much better. However, since, health-care delivery system is needed better footing and also keeping in view the State Government's eagerness to improve health-care delivery system in Sikkim, we hope and trust that the official respondents would exhibit greater sincerity and commitment in addressing the growing health-care needs of the people by improving the infrastructure including appointment of more Doctors and increase in manpower.

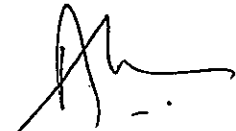
18. Consequently, both the writ petitions stand disposed of with the direction to the official respondents No. 1 and 2 that keeping in view the observations made in paragraphs 30 and 31 in WP (C) No. 29 of 2008 as mentioned above including the observations made herein in preceding paragraphs, the Government may consider the case of the petitioners, being only 4 (four) in numbers, as an exceptional case for their appointment in the posts so advertised by creating 4 (four) more posts at an earliest possible date.

19. Be it made clear herein that since no other candidates have approached this Court till date save and except these four petitioners and by this time, it appears, the validity of one year of the Select List dated 24.11.2008 has



also already been expired, this Court is of the opinion that there shall be no bar to consider the case of these petitioners.

**20.** Both the writ petitions stand disposed of accordingly.



Chief Justice.

rsr/jks