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05.	19.06.12	<p><b>BEFORE</b></p> <p><b>HON'BLE THE CHIEF JUSTICE MR. JUSTICE PERMOD KOHLI</b></p> <p><b>Present:</b> Mr. A. Moulik, Sr. Advocate with Ms. K.D. Bhutia and Mr. Ranjit Prasad, Advocates for the Petitioners.</p> <p>Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. S.K. Chettri, Asstt. Govt. Advocate for the State-respondents.</p> <p>...</p> <p><b>1.</b> The petitioners are working in the Departments of Agriculture and Horticulture in the State of Sikkim on Muster Roll basis as temporary employees for a period ranging from 14 to 20 years uninterruptedly. The petitioners 1 to 5 have been working as Field Assistants, whereas petitioners 6 to 13 have been working as Data Recorders and petitioners No. 14 to 31 as Lower Division Clerks respectively. It is alleged that the petitioners also perform the duties and functions as Village Level Workers in addition to their own duties. All the petitioners possess qualification of Class 12 in Arts and Commerce streams.</p> <p><b>2.</b> The Government of Sikkim, Department of Food Security and Agriculture Development published an employment notice dated 20.10.2011 in "Herald Classified" (Annexure P-4) inviting applications to fill up 81 vacancies of Village Level Workers in the Department, for which minimum qualification prescribed is Class 12 Pass with Bio-science. This employment notice was followed by a</p>



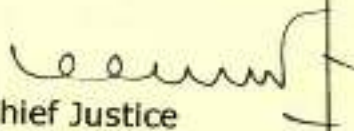
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		<p>corrigendum dated 22.12.2011 (Annexure P-5), whereunder the notified qualification has been altered and now the prescribed qualification is Class 12 pass with subject of Agriculture/Horticulture from a recognized Board.</p> <p><b>3.</b> It is the admitted case of the petitioners that they do not possess the requisite qualification i.e. the stream of Agriculture/Horticulture as notified vide corrigendum, referred to above. The petitioners, however, seek their consideration for recruitment against the advertised posts on the basis of 2008 Rules, namely, "Sikkim State Direct Recruitment (Special Provisions) Rules, 2008". Rule 3 of these Rules make special provision for direct recruitment in respect to temporary employees working in the Government Departments. Rule 3 relied upon by the petitioners is noticed hereunder: -</p> <p><b>"3. Special provisions for direct recruitment :-</b>  (1) 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:  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 respects:  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.  (2) Temporary employees in a Department, if any, subject to their having qualified in the test/interview, will be</p>



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		<p>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 temporary employees of the concerned department, if any, under the provisions of these rules.</p> <p>(3) In all such direct recruitments, the State Government through the 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.</p> <p>(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."</p> <p>4. Under Sub-rule (1) of Rule 3, the Government is empowered to relax the eligibility criteria for temporary employees in the Government Departments as may be considered expedient. The 1<sup>st</sup> proviso to Sub-rule (1) further permit relaxation not as a matter of rule but in respect to the candidates with experience and expertise gained by them during such temporary employment in a job, to be able to compete. Sub-rule (2) of Rule 3 further provides for a test/interview for such temporary employees and their selection depends upon their performance in test or in interview to be assessed. 1<sup>st</sup> proviso to Sub-rule (2) however restrict the consideration of the temporary</p>



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		<p>employees for selection upto 50% of the total number of vacant posts.</p> <p><b>5.</b> Concededly the petitioners are working against the posts lower than the Village Level Workers, i.e. the advertised posts. They are seeking their consideration against the direct recruitment vacancies as advertised by Annexure P-4/P-5 on the basis of these Rules, even though the posts advertised are higher in rank and pay scale. It is vehemently contended by Mr. A. Moulik, learned Senior Counsel appearing for the petitioners that Rule 3 does not in any manner restrict the right of the temporary employees to the same category of posts against which they are working and they are entitled to apply and be considered for higher posts though in relaxation of the eligibility criteria prescribed for the posts. This contention is totally devoid of any merit. Bare perusal of Sub-rule (4) of Rule 3 clearly indicate that a temporary employee is eligible to apply in respect to the post to be filled up by direct recruitment in the same Department where he/she is working and for the same category of posts. Thus the temporary employee is not entitled to seek consideration against direct recruitment vacancy for a higher post or in any other Department. Undisputedly, the advertised vacancies are higher in status and pay scale and thus on</p>

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		<p>account of embargo created under Sub-rule (4) of Rule 3, the petitioners are ineligible to seek their consideration for recruitment against the advertised vacancies even under 2008 Rules relied upon the petitioners. It is a different question whether the 2008 Rules are in consonance with the mandate of Articles 14 and 16 of the Constitution of India which question can be considered in an appropriate matter. As for the present petition is concerned the petitioners are not entitled to be considered against the advertised posts.</p> <p>6. This petition accordingly fails and is hereby dismissed with no order as to costs.</p> <p style="text-align: right;">   Chief Justice  19.06.2012 </p>

Index : Yes / No  
Internet : Yes / No  
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