



**THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Extraordinary Jurisdiction)**

J U D G M E N T

S.B. Writ Petition (C) No. 42 of 2013

1. Shri Milan Silwal,
Son of Late G.P. Silwal,
Asstt. Superintendent Transport,
Transport Department, SNT Division,
Government of Sikkim,
Rangpo, East Sikkim.

R/o Turung Busty,
P.O. Turung, P.S. Namthang,
South Sikkim-737 132,

... **Petitioner.**

- versus -

1. The State of Sikkim,
Through the Chief Secretary,
Government of Sikkim.
2. Department of Personnel (DOP),
Through the Secretary,
Government of Sikkim.
3. Department of Transport, SNT Division,
Through the Secretary,
Government of Sikkim.

... **Respondents.**

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**



Date of Judgment : 05.03.2014

For Petitioner : Mrs. Gita Bista, Advocate .

For State-Respondents : M/s. J.B. Pradhan, Addl. Advocate General and Karma Thinlay, Sr. Govt. Advocate with S.K. Chettri and Pollin Rai, Asstt. Govt. Advocates.

Jain, CJ (Oral).

Learned counsel for the petitioner submitted that there is no need to file rejoinder in the present matter, therefore, her statement may be recorded that she will not file any rejoinder in the case. Ordered accordingly.

2. Mr. J.B. Pradhan, learned Addl. Advocate General submitted that present matter can be disposed off as partly it has become infructuous. He submitted that so far as subsistence allowance is concerned, the same has been paid to the petitioner, therefore, writ petition to that extent has become infructuous. So far as other prayer regarding quashing of suspension order is



concerned, the petitioner should approach the concerned authority under clause (d) of sub-rule (5) of Rule 8 of Sikkim Government Service (Discipline and Appeal) Rules, 1985 (for short, 'the Rules of 1985') and in case any adverse order is passed or the petitioner feels dissatisfied with the order of the Reviewing Authority, the petitioner will have a fresh cause of action to approach this Court. He, therefore, submitted that the writ petition be disposed off.

3. Learned counsel for the petitioner admits that subsistence allowance has been/is being paid to the petitioner, therefore, to that extent, the writ petition has become infructuous. So far as quashing of suspension order of petitioner is concerned, she submitted that a liberty may be granted to the petitioner to submit a representation again before the respondents and further liberty may also be granted to approach this Court, in case, the petitioner feels dissatisfied with the order passed by the respondents on his representation.

4. I have considered the submissions of the learned counsel for the parties. The present writ petition



was filed challenging the suspension order of the petitioner passed by the respondents as well as action of the respondents in not granting the subsistence allowance to the petitioner during pendency of his suspension period. There is no dispute between the parties that during the pendency of the writ petition, the respondents have already passed an order granting subsistence allowance to the petitioner, therefore, to that extent the writ petition has become infructuous.

5. So far as another grievance about quashment of suspension order of the petitioner is concerned, I am of the view that petitioner should first approach the concerned authority for review of his suspension order under Rule 8 (5) (d) of the Rules of 1985 and in case, the reviewing authority decides his representation against him, then he will be at liberty to approach this Court again.

6. Consequently, the writ petition is disposed off with liberty to the petitioner to file a fresh representation under Rule 8 (5) (d) for review of his suspension order. If petitioner files a representation within a period of 15



(fifteen) days from today along with the order of this Court, then the respondents are directed to decide the same as early as possible, but not later than a period of two months from the date of receipt of the representation.

7. With the aforesaid observations, directions and liberty, the writ petition stands disposed off.

Sd/-

(N.K. Jain)
Chief Justice
05.03.2014