



HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

S.B. : HON’BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(C) No. 44 of 2012

Petitioners : 1. The Sikkim University
represented by its Registrar
6th Mile,
Tadong
Gangtok,
East Sikkim.

2. Prof. Mahendra P. Lama,
Founding Vice Chancellor,
Sikkim University
6th Mile,
Tadong
Gangtok,
East Sikkim.

versus

Respondents : 1. The Sikkim State Human Rights Commission
represented by its Secretary,
Bungalow No.9, VIP Colony
P.O. Rajbhawan,
Gangtok,
Sikkim.

2. The State of Sikkim
represented by its Chief Secretary
Government of Sikkim,
Gangtok.

3. Shri Rajendra Prasad,
Son of Late Jagdish Saw
Resident of Amgawan
P.O. Shila,
P.S. Simariya,
Dist. Chatra,
Jharkhand.



4. Dr. Manoranjan Mishra,
Son of Shri Harihar Mishra,
Resident of Tolagopinathpur,
P.O. Niali,
Dist. Cuttack
Orissa.
5. Dr. Shailendra Kumar Mishra
C/o Ramashankar Mishra
ARM Office,
UPSRTC
Akbarpur Depot,
Akbarpur,
Ambedkar Nagar,
U.P.
6. Shri Tapas Kumar Bayen,
C/o Shri Kajalendu Chatterjee,
Vidyasagar Sarani,
Kshiritalen,
Sonarpur
Kolkata,
West Bengal.

Application under Article 226 of the Constitution of India

Appearance

Mr. Umesh Gurung, Advocate for the Petitioners.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mrs. Pollin Rai, Assistant Government Advocate for Respondents No.1 and 2.

Mr. Rajendra Prasad, Respondent No.3 in person.

None appears for Respondents No.4 to 6.



JUDGMENT (O R A L)

(19.06.2015)

Wangdi, J.

1. This Writ Petition has been preferred by the Petitioner-University, seeking to assail the impugned Order/Minutes of the Respondent No.1, Sikkim State Human Rights Commission (for short the "Commission"), dated 21-22.09.2012, by which it was recommended, as under:

- "I. The Sikkim University its Executive Council and all concerned office bearers, employees and staff do forthwith cancel the proceedings and decisions of Executive Council dated 16.03.2012, New Delhi as it is a product of illegal initiation of proceedings and was reached in breach of the rules of natural justice.
- II. Sikkim University, its Executive Council and all concerned office bearers, and employees do pay forthwith:
 - a. Rajendra Prasad Rs.75,400/- being his illegally withheld salary for February and March 2012.
 - b. Manoranjan Mishra Rs.77,268/- being his illegally withheld salary for February and March 2012.
 - c. Shailendra Mishra Rs.36,252/- being his illegally withheld salary for February 2012.
 - d. Tapas Bain Rs.35,552/- being his illegally withheld salary for February 2012.
- III. The Sikkim University, its Executive Council and all its concerned office bearers and employees do forthwith issue:
 - a. Experience Certificate to Rajendra Prasad and Manoranjan Mishra for their full contractual period upto 31/3/2012.



- b. Experience Certificate to Shailendra Mishra and Tapas Bain for their full contractual period upto 27/2/2012.
- IV. Mahendra P. Lama do personally pay out of his own funds compensation for illegal actions initiated and persisted in by him to the prejudice and loss of the petitioners to the extent of Rs.2,44,000/- in the following breakup:-
 - a. Rs.1,20,000/- forthwith to Rajendra Prasad.
 - b. Rs.1,20,000/- forthwith to Manoranjan Mishra.
 - c. Rs.2000/- forthwith to Shailendra Mishra.
 - d. Rs.2000/- forthwith to Tapas Bain.
- V. As security for due payment by Mahendra P. Lama, the Sikkim University its Executive Council and all its office bearers and employees do withhold from the current and future dues, if any, of Mahendra P. Lama from the University a sum of Rs.2,44,000/- and that they do make the payments as recommended in item IV above to the persons mentioned unless Lama makes full and complete payment by 15/11/2012".

2. It is not disputed by the parties at the bar that the Order of the Petitioner-University dated 16.03.2012 which led the Respondents No.3, 4, 5 and 6 to approach the Human Rights Commission, was the very order which was challenged in WP(C) No.12 of 2012 filed by the Respondent No.3, Shri Rajendra Prasad, apart from assailing the recruitment process carried out by the Petitioner-University for appointment of new teachers for different Faculties.

3. Mr. Karma Thinlay Namgyal, Learned Senior Government Advocate, appearing on behalf of the Respondent No.2-Commission, submits that the finding of this Court as regards the validity of the Office Order



dated 16.03.2012 is set out in sub-paragraph (xvii) of paragraph 5 of the judgment dated 17.04.2015 in WP(C) No.12 of 2012 passed by this Court. In view of this, the present Writ Petition would be infructuous.

4. I have heard the Learned Counsel for the parties and the Respondent No.3 who presented his own case, perused the records, the judgment dated 17.04.2015 in WP(C) No.12 of 2012 as well as the pleadings in the present case and find that, as pointed out by Mr. Karma Thinlay Namgyal, in sub-paragraph (xvii) of paragraph 5, the question has been dealt with squarely, which we may reproduce below:-

“5.

(xvii) Office Order dated 16-03-2012 issued by the Respondent No.2 reveals that the service of the Petitioner was discontinued from the afternoon of 16-03-2012 on the ground of misconduct. From a bare perusal of Sub-Clause (2) of Clause 26 of the Statutes reproduced above, it will be apparent that the Executive Council is vested with the powers to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct, as was done in the case of the Petitioner. However, this is subject to fulfillment of the requirement under Sub-Clause (4) which provides that before removal from service either under Sub-Clause (2) or Sub-Clause (3), the concerned person is entitled to be given a reasonable opportunity of showing cause against such action. In the case of the Petitioner, this requirement appears to have been fulfilled when notice to show cause had been issued as stated earlier. The Petitioner, however, instead of taking this opportunity to defend himself chose to adopt a confrontationist attitude by replying to the show cause by questioning the very authority of the Registrar and the Vice Chancellor in issuing it. In my view, the action on the part of the Respondent-



University appear to be in due compliance of the procedure laid down in the Rules.”

5. As apparent from the above, the very foundation of the Respondent's case before the Human Rights Commission on the basis of which the impugned recommendations were made, was rejected by this Court holding that the proceedings of the Executive Council and the subsequent Office Order of the Petitioner-University, both of which are of the same date, i.e., 16.3.2012, were held to be valid thereby setting at naught the said recommendations.

6. It may also be relevant to note that even the arrears of salaries that were due had been paid and the experience certificates issued to the Respondents by orders of this Court dated 25.02.2013 and 16.07.2013 in CM Appl. No.18 of 2013 and CM Appl. No.31 of 2013 respectively arising out of WP(C) No.12 of 2012. These have been found recorded in paragraph 10 of the judgment dated 17.04.2015 in the said Writ Petition, the relevant portion of which reads as under:

“10.....The Petitioner was paid for the entire period till 31-03-2012 by order of this Court dated 25-02-2013 in CM Appl No.18 of 2013 and experience certificate was also issued pursuant to subsequent order dated 16-07-2013 in CM Appl No.31 of 2013.....”

7. In view of the above, the recommendations of the Respondent No.2-Commission would now no longer



be effective with no obligation on the Petitioner-University to consider it.

8. Under these circumstances the rest of questions being irrelevant being purely academic, nothing further is left for consideration by this Court.

9. In view of this, the Writ Petition stands dismissed as infructuous.

10. No order as to costs.

(**S. P. Wangdi**)
Judge
19-06-2015

Approved for reporting : **Yes**

Internet : **Yes**