



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

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

WP(C) No.12 of 2012

Petitioner : Shri Rajendra Prasad,  
S/o Late Jagdish Saw,  
R/o Amgawan,  
P.O. Shila,  
P.S. Simariya,  
Dist. Chatra,  
Jharkhand,  
A/p – Room No.305,  
Periyar Hostel,  
Jawaharlal Nehru University,  
New Delhi.

versus

Respondents : 1. The Sikkim University  
through the Vice Chancellor,  
6<sup>th</sup> Mile,  
Samdur,  
Gangtok,  
East Sikkim.

2. The Sikkim University  
through the Registrar,  
6<sup>th</sup> Mile,  
Samdur,  
Gangtok,  
East Sikkim.

3. The University Grants Commission  
through the Chairman,  
Government of India,  
Bahadur Shah Zafar Marg,  
New Delhi.

Shri Rajendra Prasad vs. The Sikkim University and Others

4. The State of Sikkim  
through the Chief Secretary,  
Government of Sikkim,  
Gangtok,  
East Sikkim.
5. Dr. Sanghamitra Choudhury,  
C/o Prof. D. K. Choudhury,  
Q No.51, Gauhati University Campus,  
P.O. Jalukbari,  
Guwahati,  
A/p Assistant Professor,  
Sikkim University,  
6<sup>th</sup> Mile,  
Samdur,  
Gangtok,  
East Sikkim.
6. Dr. Salvin Paul,  
JC – 1, S/F, Left,  
Khirki Extension, Malaviya Nagar,  
New Delhi,  
A/p Assistant Professor,  
Sikkim University,  
6<sup>th</sup> Mile,  
Samdur,  
Gangtok,  
East Sikkim.
7. Mr. Bidhan Golay,  
Centre for Himalayan Studies,  
University of North Bengal,  
Darjeeling,  
A/p Assistant Professor,  
Sikkim University,  
6<sup>th</sup> Mile,  
Samdur,  
Gangtok,  
East Sikkim.

Application under Article 226 of  
the Constitution of India

WP(C) No.12 of 2012Shri Rajendra Prasad vs. The Sikkim University and Others

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**Appearance**

Mr. Rajendra Prasad, Petitioner in person.

Mr. Ranjit Kumar Dev Choudhury and Ms. Madhuchandra Bhattacharjee, Advocates with Mr. Umesh Gurung, Advocate for Respondents No.1 and 2.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mr. S. K. Chhetri and Mrs. Pollin Rai, Assistant Government Advocates for the State-Respondent No.4.

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**J U D G M E N T**

(17<sup>th</sup> April, 2015)

**Wangdi, J.**

**1(i).** The Petitioner who was serving as an Assistant Professor in the Sikkim University on contractual basis for different periods between the years 2008 and 2012, has preferred this Writ Petition seeking to assail the Appointment Notices dated 29-04-2010 (Annexure P-1) and 28-04-2011 (Annexure R/2-17) issued by the Sikkim University for appointments to several Teaching Positions in various Departments and, the resultant appointments of the Respondents No.5, 6 and 7 as Assistant Professors. The Respondents No.1 and 2 are the Vice Chancellor and the Registrar of the

Sikkim University respectively who had conducted the interviews and declared the impugned results leading to the appointments of the Respondents No.5, 6 and 7.

(ii) Gravamen of the Petitioner's case is that an appointment notice bearing no.SU/Advt./2010-11 dated 29-04-2010 (Annexure P-1) was published by the University for Regular Teaching Positions in various local and national newspapers including the website of the University in response to which the Petitioner applied for the post of Assistant Professor in the Department of Peace and Conflict Studies and Management, School of Peace, Conflict and Human Security Studies. Consequently, he received an intimation letter dated 20-12-2011 (Annexure P-2) asking him to appear for the interview to be held at New Delhi on 15-02-2012 and 16-02-2012 and accordingly appeared in the interview on 15-02-2012 in New Delhi. It is alleged that the University without publishing the result either in the newspapers or on its website or putting it up in the Notice Board, issued appointment offer letters to the Respondents No.5, 6 and 7. Upon enquiry, the Petitioner was informed that

he was unsuccessful in the interview and the Respondents No.5, 6 and 7 being successful, had been appointed as Assistant Professors in the Department of Peace and Conflict Studies and Management. The Petitioner alleges that the entire selection process was done surreptitiously.

(iii) Being aggrieved by the result and dissatisfied with the procedures adopted during the process of recruitment which he considered to be arbitrary and *mala fide*, the Petitioner made a representation dated 27-02-2012 (Annexure P-3) before the Members of the Second Executive Council of the University alleging lapses in the recruitment process. This led to the Petitioner and three others being issued with show cause notices by the Registrar, Respondent No.2, and their services were terminated on the ground of misconduct on 16-03-2012 (Annexure P-4) by a decision in the second meeting of the Second Executive Council without being afforded to them opportunities to defend themselves in clear violation of the principle of natural justice and Clause 26 of the Statutes of the University.

(iv) It is stated that the University had acted in violation of the procedures prescribed in Clauses 18(1) and 18(2) of the Statutes of the Sikkim University Act, 2006 which provide for constitution of Selection Committees and its composition for making recommendations for appointments, *inter alia*, to the post of Professor. It is alleged that the Vice Chancellor, Respondent No.1, exercising his emergency powers vested in him under Section 12(3) of the Sikkim University Act, 2006, had given a go-bye to this provision in gross violation of Office Memorandum No. F.3-9/97-Desk(U), Department of Secondary Education and Higher Education, Ministry of Human Resource Development (MHRD), Government of India dated 11-06-2001 (Annexure P-6) which expressly prohibits exercise of such powers in matters, *inter alia*, of appointment to teaching and academic posts, finalising recruitment procedures, etc. That the recruitment process was deliberately undertaken at the time when the Executive Council and the Academic Council did not exist. It is stated that the First Executive Council and the First Academic Council demitted their Offices on 03-

04-2011 and 24-08-2011 respectively and the first meeting of the Second Academic Council and Executive Council was held on 22-02-2012 but, the interview was conducted between 10-01-2012 to 17-02-2012.

(v) *Mala fides* on the part of the Vice Chancellor, Respondent No.1, has been alleged in stating that he intended to recruit his own favourites in preference to internal contractual teachers with whom he had personal differences which would, as per the Petitioner, be evident from the fact that even though the first Appointment Notice for recruitment in the Regular Teaching Positions was issued on 29-04-2010 when the First Executive Council and the First Academic Council were in Office but, no interview was conducted and, was held only after their tenure was completed and before the Second Executive Council could be constituted. That the recommendations of the Selection Committee was then placed in the first meeting of the Second Executive Council which endorsed the recommendations resulting in the appointments of the Respondents No.5, 6 and 7. It is then contended that even the second meeting of the

Second Executive Council held on 22-02-2012 which endorsed the recommendations was invalid as it did not fulfil the requisite quorum.

**(vi)** It is further alleged that interviews were held at a very short notice in New Delhi when it ought to have been held at Gangtok, Sikkim, where the University is located. Further, the candidates were made to undergo an additional test in computer skill which did not find mention in the Appointment Notice and, even the criteria for evaluating such skill were not indicated which, as per the Petitioner, reflected the intention of the Respondent No.1 to manipulate the result.

**(vii)** It is then alleged that the reservation policy contained in Office Memorandum No.36012/2/96-Estt. (Res) dated 02-07-1997 (Annexure P-9), issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions (DOPT), Government of India, had not been followed in the Appointment Notices. The constitution of the Selection Committee also was in conflict with the requirement



prescribed under Section 5.1.1 [(a)(6)] of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standard in Higher Education, 2010 dated 30-06-2010 (Annexure P-1).

**(viii)** On the above premises, the Petitioner has sought for the reliefs as stated earlier.

**2(i).** In their counter-affidavit sworn by the Registrar, Respondent No.2-University, although the factum of the recruitment process having taken place on 15-02-2012 and 16-02-2012 has not been denied, it is stated that the Petitioner was also actively involved in the work relating to the recruitment process having been selected to do so in view of his past experience. The Petitioner and other applicants had appeared as candidates in the interview in respect of the post of Assistant Professor in the Department of Peace and Conflict Studies and Management (on Regular Basis) held on 15-02-2012, without any protest. The result was placed in an envelope and sealed by the Selection

Committee at New Delhi soon after the interview was over and then placed in the first meeting of the Second Executive Council held on 22-02-2012 where it was opened before the Members and, the result declared on the very day.

(ii) On being unsuccessful, the Petitioner and others submitted a representation dated 27-02-2012 before the Members of the Second Executive Council through the Registrar, Respondent No.2 and, on the very next day, i.e., 28-02-2012, went to the Press making false allegations and insinuations against the Officials of the University and its Authorities. This led the Respondent No.2 to call for explanation from the Petitioner for having committed breach of privilege but, the Petitioner, instead of giving an explanation or showing cause, chose to question the Authority of the Respondent to issue the show cause notice. Report was also received on 16-03-2012 from Dr. Nawal K. Paswan, Associate Professor of Department of Peace and Conflict Studies and Management, that the Petitioner had not taken any classes and was abstaining from routine activities of the Department. On 16-03-

2012, the second meeting of the Second Executive Council held at New Delhi, took a decision to discontinue with the services of the Petitioner and one Dr. Manoranjan Mishra with effect from the afternoon of that day on the ground of misconduct culminating in the issuance of Office Order dated 16-03-2012 upon the Petitioner conveying the decision of the Executive Council. It is stated that the Petitioner having participated in the selection process without any protest or objection is estopped from challenging the same after having become unsuccessful.

*(iii)* That no procedural lapses have been committed by the Respondent-University and the Office Memorandum No.36012/2/96-Estt.(Res) dated 02-07-1997 issued by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, had not been violated while carrying out the selection process. Block Roster Policy has been duly followed in providing reservation for Scheduled Castes – 15%, Scheduled Tribes – 7.5% and Other Backward Classes – 27%. Contravention of Clauses 18(1) and 18(2) of the Statutes of the Sikkim

University Act, 2006 and misuse of emergency powers by the Respondent No.1 in violation of Office Memorandum No.F.3-9/97-Desk(U), Department of Secondary Education and Higher Education, Ministry of Human Resource Development (MHRD), Government of India dated 11-06-2001 (Annexure P-6), have been categorically denied.

(iv) It is stated that the First Executive Council and the First Academic Council in their meetings held on 03-04-2011 and 24-08-2011 had directed and authorised Respondent No.1 to nominate the required number of Members to the Selection Committee. It was in furtherance of this direction that the Selection Committee was constituted by the Respondent No.2 for holding the recruitment process and that at the material time, the posts of Dean and Head of Department of the University were vacant. The Selection Committee, however, was comprised of very eminent experts and public figures. It was thus the case of the Respondent-University that the Respondent No.1 had only carried out the decisions of the Executive

Council directing him to conduct the recruitment of Regular Teaching Positions.

(v) Violation of Section 5.1.1 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standard in Higher Education, 2010 dated 30-06-2010, has been categorically denied. It is stated that the University is governed by Clause 18(2) of the Statutes of the Sikkim University Act, 2006 and does not fall within the purview of Section 5.1.1 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standard in Higher Education, 2010 dated 30-06-2010.

(vi) *Mala fides* alleged against the Respondent No.1 has been categorically denied. It is stated that out of 56 (fifty six) internal contractual teachers, only 29 (twenty nine) were successful and of the 27 (twenty

seven) unsuccessful contractual teachers, 23 (twenty three) continued to serve till the expiry of their contractual period, i.e., 31-03-2012, and the rest 4 (four) were granted extension for 2 to 3 months in view of exigencies of service. The services of 2 (two) contractual teachers including the Petitioner were discontinued with effect from 16-03-2012 as per the decision of the Second Executive Council.

**(vii)** It is stated that the interview could not be conducted during the existence of the First Executive Council and the First Academic Council due to the absence of Visitor's nominee and the time taken in short listing and other procedures that were required to be followed and, also in finalising the interview dates duly considering the availability of the Visitor's nominee and other Selection Committee Members. The allegation of want of the requisite quorum in the Second Executive Council Meeting dated 22-02-2012 has also been denied. It is stated that considering Clause 11(3) of the Statutes of the Sikkim University Act, 2006, the quorum required for the Executive Council Meeting would be 6 (six) and since in the

Second Executive Council Meeting on 22-02-2012 was attended by that number of Members, it was a valid meeting.

**(viii)** The object of holding the interview at New Delhi has been explained by stating that the venue was suggested by the Visitor's nominee and for the convenience of the Selection Committee Members as they were invited from the different parts of the country. The candidates who were called for the interview were paid TA/DA for the journey undertaken by them and the dates of interview were not fixed at a short notice as the Petitioner was intimated of the date of the interview on 20-12-2011 which is about 2 months before the date of interview.

**(ix)** The computer skill test were conducted to assess the language and expression, knowledge and assimilation and basic computer skill of the candidates appearing for the interview and all the candidates including the Petitioner who participated in the skill test passed.

(x) The Respondents-University thus pray for dismissal of the Writ Petition.

**3(i).** During the arguments, the Petitioner appearing in person, first chose to assail the Appointment Notices dated 29-04-2010 and 28-04-2011 on the ground that the reservation policy prescribed vide Office Memorandum No.36012/2/96-Estt.(Res) issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 02-07-1997, prescribing post based Reservation Roster as mandated in the case of ***R. K. Sabharwal and Others vs. State of Punjab and Others : (1995) 2 SCC 745***, had not been complied with. As per the Petitioner, the requirement of providing such reservation was reiterated even by the University Grants Commission vide its letter No.F.1-5/2006(SCT) dated 25-08-2006 prescribing guidelines for the purpose. He would submit that such non-compliance was also against the directions contained in ***Dr. Suresh Chandra Verma and Others vs. The Chancellor, Nagpur University and Others : (1990) 4 SCC 55***. In failing to do so, the candidates



were unaware as to whether they were competing for their own category or for the unreserved posts. As a consequence, lesser number of appointments were made from the OBC, Unreserved and SC categories.

(ii) The Petitioner then strongly assailed the recruitment process alleging violation of Clauses 18(1) and 18(2) of the Statutes of the Sikkim University Act, 2006. It is submitted that the Selection Committee constituted by the Vice Chancellor is not in conformity with Clause 18(2) of the Statutes of the Sikkim University Act, 2006. It was alleged that the Vice Chancellor had acted in violation of Office Memorandum No.F.3-9/97-Desk(U), Department of Secondary Education and Higher Education, Ministry of Human Resource Development (MHRD), Government of India dated 11-06-2001 (Annexure P-6) which expressly prohibits Vice Chancellors of Central Universities from exercising emergency powers vested in them under Section 12(3) of the Sikkim University Act, 2006, in routine matters like appointments. It was his submission that the Vice Chancellor had acted in such manner deliberately with the *mala fide* intention to

appoint teachers of his choice. That as the Selection Committee constituted by the Vice Chancellor did not have a Member from the SC/ST/OBC, it was violative of Clause 5.1.1. of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standard in Higher Education, 2010 dated 30-06-2010 (Annexure P-11). Relying upon ***University Grants Commission and Another vs. Neha Anil Bobde (Gadekar) : (2013) 10 SCC 519*** and ***University of Delhi vs. Raj Singh and Others : 1994 Supp (3) SCC 516***, it was contended that the UGC Regulations are applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and have the widest possible application.

**(iii)** It was next argued that there was deliberate delay on the part of the Vice Chancellor in conducting the interview. He states that although the Appointment Notice was first issued on 29-04-2010 during the tenure of First Executive Council and the First Academic Council between 10-01-2012 to 17-02-2012, the

selection process was, however, conducted after their tenure was over and before the Second Executive Council and the Academic Council was formed. The Second Executive Council which was formed soon after the interview, held its first meeting on 22-02-2012 where the recommendations of the Selection Committee arising out of the recruitment process were placed and endorsed by it followed by issuance of appointment letters to the Respondents No.5, 6 and 7. This, as per the Petitioner, was willful and deliberate. It was next contended that even the Second Executive Council Meeting held on 22-02-2012 was invalid as it did not have the requisite quorum of 7 (seven) of the total 10 (ten) Members but, consisted of only 6 (six) Members.

**(iv)** The Petitioner then submitted that result of the interview was not declared by either publishing in the newspapers or put up in the University website or on the Notice Board of the University but, only the selected candidates were issued with the appointment letters leaving the other candidates in the dark of the result. Relying upon *Krishan Yadav and Another* vs.

***State of Haryana and Others : (1994) 4 SCC 165***, it was submitted that such a method would clearly lead one to draw an inference that it was motivated by extraneous considerations.

(v) The Petitioner then went on to submit that the candidates were made to undergo an additional test in computer skill which was not stated in the Appointment Notice and the criteria for evaluating such skill were also not mentioned. This, as per him, was in violation of the law laid down in ***Rakhi Ray and Others vs. High Court of Delhi and Others : (2010) 2 SCC 637***.

(vi) The Petitioner submits that although he had willingly participated in the interview, he would not be estopped in challenging the selection process when glaring illegalities have been committed by the Respondent-University in the recruitment process. Reliance was placed on this on ***Raj Kumar and Others vs. Shakti Raj and Others : (1997) 9 SCC 527***. It is also submitted that in ***A. Umarani vs. Registrar, Cooperative Societies and Others : (2004) 7 SCC 112*** and ***Rajesh Kumar Gupta and Others vs. State of UP and Others :***

(2005) 5 SCC 172, the Hon'ble Supreme Court quashed the appointments when serious procedural lapses were found in the selection process.

(vii) Finally, the Petitioner questioned the order of termination of his service on the ground of misconduct as being grossly against the principle of natural justice and in violation of Section 26 of the Statutes of the Sikkim University Act, 2006, in as much as he was not given an opportunity of defending himself before it was passed. Relying upon the case of *Davinder Singh and Others vs. State of Punjab and Others : (2010) 13 SCC 88*, it was submitted that the Respondent-University having failed to comply Section 26 of the Statutes, the order of termination would be rendered arbitrary as it was not a termination simplicitor but with stigma on ground of misconduct that would impede his future employment prospects.

4(i). Mr. Ranjit Kumar Dev Choudhury and Ms. Madhuchandra Bhattacharjee, Learned Counsel, appearing on behalf of the Respondents No.1 and 2 with Mr. Umesh Gurung, Advocate, first of all sought to

press preliminary objections on the maintainability of the Writ Petition. It was submitted that although *mala fides* have been alleged against the then Vice Chancellor, Prof. Mahendra P. Lama and the then Registrar, Dr. Jyoti Prakash Tamang of the University, they have not impleaded as parties. Relying upon ***I. K. Mishra vs. Union of India and Others : (1997) 6 SCC 228*** and ***Chandra Prakash Singh and Others vs. Chairman, Purvanchal Gramin Bank and Others : (2008) 12 SCC 292***, it was submitted that the plea of *mala fide* places heavy burden on the party making it requiring strong and convincing evidence to establish it and that the presumption under the law is in favour of *bona fides*, unless contradicted by acceptable material.

**(ii)** The Learned Counsel would submit that it is nowhere been pleaded that the University had maliciously deprived the Petitioner from being selected. On the contrary during the recruitment process, the University had selected the Petitioner as a Member of the Committee to short list Faculty Positions for the newly launched BBA-MBA academic programme vide Office Order dated 01-06-2011 (Annexure R/2-14)

thereby belying the allegation of malice on the part of the University towards the Petitioner and that the allegation was an afterthought, the Petitioner having realised that he was not selected and that there were better candidates than him.

(iii) It was next urged that the Petitioner has prayed for "a writ/order or direction in the nature of *Mandamus/Certiorari* or any other appropriate writ/order or direction quashing the entire recruitment process for regular establishment". However, he has failed to implead all those appointed pursuant to the recruitment process as Respondents. Referring to ***Udit Narain Singh Malpaharia vs. Additional Member Board of Revenue, Bihar and Another : AIR 1963 SC 786***, it was submitted that it would be against the principle of natural justice to make an order adverse to those who were appointed in pursuance of the selection process being impugned behind their back. This having not been done, the Writ Petition was incompetent and liable to be rejected. Reference in this regard was also made to ***Shridhar, S/o Ram Dular vs. Nagar Palika, Jaunpur and Others : 1990 (Supp) SCC 157***.

(iv) It is then contended that the Petitioner who is a failed candidate, is barred by the principles of estoppel and acquiescence from challenging the recruitment process and the appointments made consequent thereto as he had willingly participated in the recruitment process taking a chance to get selected and that after being unsuccessful it was now not permissible for him to turn around and contend that the interview was unfair or there was some lacunae in the process. It is submitted that the Petitioner was fully aware of the Appointment Notice, its terms and the recruitment process held in furtherance thereto as he was a Member of a Committee constituted for short listing Faculty Positions for the newly launched BBA/MBA academic programme vide order dated 01-06-2011 (Annexure R/2-14). During the entire process of recruitment, he had not raised any question on any aspect of the selection process including the constitution of the Selection Committee prior to 22-02-2012. The Petitioner had also appeared as a candidate in the selection process taking a calculated chance and, therefore, it was not open for him to question the



selection process on the grounds raised in the Writ Petition. Reliance on this has been placed on several decisions of the Apex Court which are -

- (i) ***Om Prakash Shukla* vs. *Akhilesh Kumar Shukla and Others* : AIR 1986 SC 1043;**
- (ii) ***Madan Lal and Others* vs. *State of Jammu & Kashmir and Others* : AIR 1995 SC 1088;**
- (iii) ***Suneeta Aggarwal* vs. *State of Haryana and Others* : AIR 2000 SC 1058;**
- (iv) ***Chandra Prakash Tiwari and Others* vs. *Shakuntala Shukla and Others* : AIR 2002 SC 2322; and**
- (v) ***K. H. Siraj* vs. *High Court of Kerala and Others* : (2006) 6 SCC 395.**

(v) On the allegation of violation of the Reservation Policy, it is contended that firstly, it has not been pleaded that the Petitioner was a better candidate who ought to have been selected in place of private Respondents and that, being a candidate from a reserved category he was entitled to be appointed in one of the reserved posts. Secondly, it is submitted that before making a claim for being appointed as a reserved category candidate, it is essential for the

Petitioner to satisfy that he was a selected candidate who was illegally deprived from getting appointment as such candidate. It is the specific case of the Respondent-University that the Petitioner is a failed candidate disentitling him from making such claim. The Learned Counsel would submit that the impugned recruitment process for regular establishment is the first of its kind after the Sikkim University was established. Out of the vacancies of 21 (twenty one) Departments that were advertised, results of only 16 (sixteen) were declared. In the meanwhile, further Departments had been added and the cadre strength of each position in all the Departments are yet to be exhausted. It is urged that even assuming but not admitting that the Petitioner was eligible, he still could not have been appointed, as the cadre of Assistant Professor in the Department of Peace and Conflict Studies and Management is 3 (three) and, as per the Model Roster for reservation, the first 3 (three) positions are unreserved.

**(vi)** Denying violation of Clauses 18(1) and 18(2) of the Statutes of the University, it was submitted that

the impugned recruitment process being the first for regular establishment of the Sikkim University after its establishment, the question of there being a Dean or Head of the Department in the Selection Committee would not arise. The Selection Committee consisted of eminent experts and public figures whose *bona fides* or integrity have not been questioned in the Writ Petition.

**(vii)** Exercise of emergency powers by the Vice Chancellor has been categorically denied. It is stated that under Section 12(2) of the Sikkim University Act, 2006, the Vice Chancellor is the Principal Executive and Academic Officer of the University exercising general supervision in the affairs of the University. Moreover, as per the Learned Counsel, the First Executive Council and the First Academic Council who are the Authorities of the University under Section 20 of the Sikkim University Act, had in their meetings held on 03-04-2011 and 20-08-2011, authorised the Vice Chancellor to nominate the required Members of the Selection Committee and to initiate the interview process for appointment of Faculty Members. The Vice Chancellor has thus merely given effect to the decision of the

Executive Council and the Academic Council. It is pointed out further that under Clause 42 of the Statutes of the Sikkim University Act power has been vested in any officer or authority of the University to delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers. It is thus contended that the Petitioner was misconceived in alleging exercise of emergency powers by the Vice Chancellor.

**(viii)** On the allegation of delay in conducting the interview, it was submitted that the time taken was due to the requirement in complying with the First Proviso to Clause 18(3) of the Statutes as per which meetings of the Selection Committee are required to be fixed only after prior consultation with and subject to the convenience of Visitor's nominee and the experts nominated by the Executive Council. That the University received intimation of the Visitor's nominee only in April, 2011, after the First Executive Council had

demitted its Office. Thereafter, dates of the interview had to be decided on the advice of the Visitor's nominee taking into consideration their availability. Thus, the allegation of intentional delay on the part of the University was unfounded. It is stated that if the Petitioner had been aggrieved by the delay in conducting the interview, he ought to have approached the Court before participating in the interview.


**(ix)** Rebutting the allegation of the University not having declared the result, it was submitted that the Selection Committee consisting of eminent experts and public figures whose *bona fides* or integrity have not been questioned, conducted the interview and the panel of selected candidates placed in sealed envelope laid before and approved by the Second Executive Council in its meeting on 22-02-2012 and thereafter, the selected candidates were issued appointment letters as per the practice followed by all the Central Universities.

**(x)** On the allegation of violation of UGC Regulations, 2010, the Learned Counsel would submit

that the Sikkim University is guided by the provisions of Sikkim University Act, 2006, which as per him, has been followed in the present case and the UGC Regulations, 2010, being a Regulation cannot override the provisions of an Act passed by the Parliament.

**(xi)** It is submitted that reliance placed by the Petitioner on the case of *Raj Kumar (supra)* and the rest of the decisions cited at the bar by the Petitioner hold good on the facts and circumstances in those cases which are clearly distinguishable from those in the present case and, therefore, not applicable.

**(xii)** As regards the allegation of additional test in computer skill which the candidates were made to undergo, the Learned Counsel asserts that it was held only to assess the language and expression, knowledge and assimilation and basic computer skill of the candidates appearing for the interview. As all the candidates had willingly undertaken the test and passed, no prejudice was caused to any one of them including the Petitioner.



**5(i).** I have given thoughtful and anxious consideration to the respective submissions of the parties, the pleadings and the documents on record. Before dealing with the preliminary objections which the Respondent-University have raised, we may take up the contentions raised by the Petitioner in *seriatim* as shall follow hereafter.

**(ii)** The first contention as regards the violation of the Reservation Policy by the Respondent-University is concerned, it is eminently evident on a perusal of the pleadings contained in the Writ Petition that it is not the Petitioner's case that he was aggrieved by the recruitment process being a candidate belonging to any of the reserved category but, has questioned it generally on the alleged lapses on the part of the University. Therefore, the issue as regards the purported non-compliance of the Reservation Policy appears to be an afterthought. None of the candidates belonging to the reserved category have come forward to assail the Appointment Notice and the consequent recruitment process. Even otherwise, on a bare perusal of Appointment Notice dated 29-04-2010



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(Annexure P-1), the following appears to have been clearly indicated: -

Qualifications	As prescribed by UGC
Specification	Please refer our website : <b>www.sikkimuniversity.in</b> and click section on <b>"Opportunities at SU"</b> on the left hand side.
No. of posts in each of the above mentioned Department	Professor-I, Associate Professor-2, Assistant Professor-3, in the case of Sl. No.9, Assistant Professor-4, others remain same.
Pay	UGC Scale of Pay (Revised)
Reservation	Professor-SC-1, Associate Professor-SC-2, ST-I, Assistant Professor-SC-4, ST-2, OBC-7.
Reservation for DA candidates will be as per Government of India instructions from time to time.	

(iii) As would appear from the above, the reservation to various posts appears to have been clearly indicated in the manner prescribed by the UGC. It, therefore, cannot be said that the Appointment Notice is in violation of the Government of India Office Memorandum No.36012/2/96-Estt.(Res) dated 02-07-1997, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Annexure P-9, which stipulates implementation of post based reservation as directed by the Hon'ble Supreme Court in the case of **R. K.**



*Sabharwal (supra)*. It is the categorical case of the Respondent-University that in the selection process Block Roster Policy has been duly followed in making the reservation as per the Government of India directive maintaining the reservation for Scheduled Castes – 15%, Scheduled Tribes – 7.5% and Other Backward Classes – 27%. This also appears to be in compliance to the guidelines issued by the UGC enclosed in the letter dated 25-08-2006, Annexure P-18, as would appear from paragraph 7 of the guidelines in so far as the percentage of reservation for SC and ST is concerned. Moreover, undisputedly the Petitioner had been involved in the recruitment process as a Member of the Committee for short listing Faculty Positions for the newly launched BBA/MBA academic programme and, therefore, it is difficult to accept that he was completely in the dark about the terms of the Appointment Notice and the other inadequacies pointed out by him. It is also not the case of the Petitioner that his performance in the interview was excellent except to state that he had good knowledge about the subject and also had long teaching experience.

(iv) As regards the allegation of violation of Clauses 18(1) and 18(2) of the Statutes of the Sikkim University is concerned, as noted earlier, the case of the University is that Clause 18(2) could not be adhered to for want of Dean of the School and the Head of the Department for the reason that the recruitment process being assailed was first of its kind after the establishment of the Sikkim University. Under such circumstance, the First Executive Council and the First Academic Council, who are Authorities of the University under Section 20 of the Sikkim University Act, had in their meetings held on 03-04-2011 and 20-08-2011, authorised the Vice Chancellor to nominate the required Members of the Selection Committee to initiate the interview process. Under Section 12(2) of the Sikkim University Act, 2006, the Vice Chancellor is the Principal Executive and Academic Officer of the University exercising general supervision in the affairs of the University. Although the exercise of the powers by the Vice Chancellor under Section 12(3) of the Sikkim University Act, 2006, has been denied, I find that on a perusal of the minutes of the 10<sup>th</sup> Meeting of

the First Academic Council held on 20-08-2011, filed as Annexure R-2/28 (collectively), under agenda note 10.33.4, the Vice Chancellor had been authorised to exercise the said power to select the required number of experts from the panel of names recommended by the House and constitute the Selection Committee and proceed with the recruitment action, further resolving that such action taken by the Vice Chancellor be intimated to the Second Executive Council for ratification in terms of Section 12(3) of the Sikkim University Act. It would, therefore, appear that the Vice Chancellor had indeed acted under Section 12(3) of the Sikkim University Act, the only difference being that it was not resorted to *suo moto* but, on being authorised to do so by the resolution of the First Academic Council Meeting.

(v) It is, therefore, quite apparent that, as stated on behalf of the Respondent-University, the Vice Chancellor was giving effect to the decision of the Executive Council and the Academic Council. This also appears to be in conformity with Clause 42 of the Statutes of the Sikkim University which vests any

officer or authority of the University to delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers.

(vi) The next that calls for consideration is as to whether or not such action is in conflict with the Government of India Office Memorandum No. F.3-9/97-Desk(U), Department of Secondary Education and Higher Education, Ministry of Human Resource Development (MHRD), dated 11-06-2001 (Annexure P-6). On a perusal of the Memorandum, the necessity to issue the guidelines for observance by the Vice Chancellors of all the Central Universities in exercising their emergency powers was felt necessary as there had been complaints that in a few Universities this power was being invoked as a matter of routine with the result that the Statutory Bodies, like the Court, the Executive Council and the Academic Council, etc., were being increasingly asked to endorse action taken on their behalf by the Vice Chancellors and, that such

powers were being used to marginalise these Bodies and to reduce frequencies of their meetings. It was, therefore, *inter alia*, provided in the guidelines that such power should be exercised with restraint and only in such emergency situations where the authority ordinarily empowered to exercise such powers is unlikely to meet in the near future and, deferring a decision for consideration of the appropriate Body was likely to create serious administrative inconvenience and, further that such power should not be exercised in routine matters, like creation of teaching and academic posts, appointment to such posts, etc. In the present case, the First Academic Council while authorising the Vice Chancellor to invoke his emergency powers in its 10<sup>th</sup> Meeting dated 20-08-2011 referred to above, appears to have taken due note of the guidelines as would appear from the following extract of the minutes: -

**"10.33.4** The term of the First Executive Council was already over and the term of the First Academic Council would be over by 25.08.2011. The Visitor has already approved the constitution of the Second Executive Council and Second Academic Council for which the nominees of the Visitor have been requested for by the University and the same is awaited. In the meantime in order to start the requirement of Teaching staff, the Academic Council

may kindly suggest a panel of names of experts to the Selection Committee to each of the cadre of Professor, Associate Professor and Assistant Professor. As already mentioned in Agenda Item supra, in terms of Section 12 (3) the Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under the act and shall report to such Authority at its next meeting the action taken by him on such matter. Exercising the said power conferred upon him may select the required no. of experts from the panel of names recommended by the House and constitute the Selection Committee and proceed with recruitment action. The said action taken by the Vice Chancellor may also be intimated to the second Executive Council for ratification in terms of the above Section 12 (3).

**10.33.5** The House may accordingly recommend a panel of names of experts to the Selection Committee.

**Minutes:**

**10.33.1** The House authorized the Vice Chancellor to prepare a panel of names to the selection committee for recruitment to the various teaching positions on permanent basis. The Chairperson requested the House that the members of the first Academic Council may also provide their names for inclusion in the panel."

**(vii)** From the facts and circumstances as set out above which clearly reflects an extraordinary situation obtaining in the University falling within the Exception carved out in the Memorandum dated 11-06-2001 (Annexure P-6), the contention that the Vice Chancellor has taken over the powers endorsed to the Executive Council and the Academic Council and had acted in

violation of Government of India Office Memorandum No. F.3-9/97-Desk(U), Department of Secondary Education and Higher Education, Ministry of Human Resource Development (MHRD), dated 11-06-2001 (Annexure P-6), appears to be unfounded.

**(viii)** The above would also answer the allegation that the entire interview process was conducted in the absence of the Executive Council and the Academic Council and that the exercise was carried out by the Vice Chancellor to recruit his favourites and expel others with whom he had personal differences.

**(ix)** The allegation that there was undue delay in holding the interview also does not appear to be justified in view of the explanation given by the University. It is stated by the University that they received the nomination of the Visitor's nominee only in April, 2011, after the First Executive Council had demitted its Office. This appears to be borne out by letter dated 11-04-2011 (Annexure R-2/30) issued by the Under Secretary of the Government of India, Ministry of Human Resource Development, Department

of Higher Education, by which it was conveyed that the President in her capacity as the Visitor of the University has been pleased to appoint the nominees on the Selection Committees for appointment of teachers in the various Schools of the Universities. This was after several requests had been made as would appear from letters dated 16-04-2009 and 10-12-2010 written by the Registrar, Sikkim University to the Director (CU), Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi. It was only after that interviews for the 16 (sixteen) Departments were conducted in a phased manner from 30-09-2011 to 16-02-2012. Thus the allegation appears to be unfounded.

(x) Next, on the question of result having not been declared either by publication in the newspapers or by putting it up in the website or on the Notice Board, it is the case of the University that as per the practice being followed by the Central Universities, it had telephoned the successful candidates followed by issuance of appointment letters to them. This may not be the ideal method but, that by itself does not indicate



massive malpractice in the recruitment process in the light of the facts alluded to above and the procedure followed in the recruitment process.

(xi) The decision in *Krishan Yadav (supra)* relied upon to assail the recruitment process is based upon the facts in that case where favouritism, nepotism, unfairness and a good deal of political influence had played a vital role in the selection disregarding merit altogether. Serious allegations of destruction of records had led the Hon'ble Supreme Court to pass orders directing the Government of Haryana to refer the matter for investigation by the Central Bureau of Investigation (CBI) and the CBI in its report had pointed out fraud having been played by the persons in the authority in as much as there were overwritings and interpolations in the selection list. Persons who did not attend the interview had awarded marks and forgeries had been found to have been committed. There were also several cases where the persons who took the viva voce had been declared absent in the final selection list and political influence was found to have had a free hand. It was, under such

circumstance, the Hon'ble Supreme Court had set aside the entire selection. In the case at hand, as discussed earlier, such circumstances do not exist and appears to be only a perceived motion of the Petitioner.

**(xii)** The additional test being held in computer skill was subjected to all the candidates and all had passed. No prejudice at all appears to have been caused and, therefore, I find that the objection is of no consequence.

**(xiii)** The Petitioner's challenge on his termination order is that the action was taken without giving him an opportunity of defending himself against the allegation on the basis of which it was issued and, therefore, violative of the principle of natural justice and also Clause 26 of the Statutes. The Petitioner alleges that having been dissatisfied with the result of the interview, he had submitted a written representation dated 27-02-2012 before the Members of the Second Executive Council in accordance with Primary Statutes 12(3)(3) of the Sikkim University Act, 2006, pointing out gross violation and serious lapses on

the part of the University in the recruitment process. This led to the Registrar, Respondent No.2, to issue show cause notice to him and thereafter, in the second meeting of the Executive Council the services of the Petitioner and another Member of the Faculty were terminated on the ground of misconduct vide Office Order dated 16-03-2012. On a perusal of the records, the sequence of events narrated by the Petitioner does not appear to be completely correct. The show cause notice issued to the Petitioner was necessitated when on 28-02-2012 he had issued a Press release making false allegations and insinuations against the University without waiting for the outcome of his representation submitted a day earlier, i.e., 27-02-2012, thereby committing serious misconduct apart from falling within the mischief of Clause 10 of the contract of his appointment. This fact has not been disclosed by the Petitioner in the Writ Petition. It was this act of the Petitioner that had invited a show cause notice dated 06-03-2012 being issued to him by the Respondent No.2 on the approval of the Vice Chancellor. The show cause notice reads as under: -

WP(C) No.12 of 2012Shri Rajendra Prasad vs. The Sikkim University and Others

" .....

SU/2011-12/ 4955 Dated 6<sup>th</sup> March 2012

To

Shri Rajendra Prasad  
 Assistant Professor  
 Department of Peace, Conflict & Security Studies  
 Sikkim University

**Sub: Explanation call for breach of privilege****Dear Shri Prasad,**

Two newspapers published from Gangtok "Sikkim Now" and "Samay Dainik", published the press release given by you on 28th February 2012 making false allegations and insinuations against the University and its authorities. This is a serious violation of both the basic norms of the University and code of conduct by you.

This show cause notice is issued to you asking you as to why action should not be initiated against you for this breach of privilege. University hereby asks you to respond to this notice within 48 hrs of the issue of this note, failing which University will be free to take any actions against you.

This is issued with the approval of the Vice Chancellor.

Yours faithfully

Sd/-

Registrar

Copy to:

1. PS to Vice Chancellor
2. PS to Registrar

....."

**(xiv)** The Petitioner instead of showing cause replied questioning the very authority of the Respondent No.2

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in issuing the show cause notice by his reply dated 08-03-2012 in a tone and tenor, as would appear from the reply, which is reproduced below: -

"March  
Dated: 8<sup>th</sup> February, 2012

To,  
Dr. Jyoti P. Tamang  
Registrar  
Sikkim University  
Gangtok, Sikkim

**Subject: Reply to the letter No SU/2011-12/4955 Dated 6<sup>th</sup> March, 2012**

Dear Dr. Tamang,

**Wish you a very happy, safe and colorful Holi!**

With my due regards, I want to inform you that show cause notice issued to me by your signature does not have authenticity. In case of academic staff of the university, the Vice Chancellor is a competent authority to issue such kind of notice in writing. This has been reflected in para no 26 (1) the Statues (sic) of University, Sikkim University Act, 2006. Para 26(1) says "***Where there is an allegation of misconduct against a teacher .....the Vice Chancellor by order in writing, place such teacher .....under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made***".

I also want to refer the para no 6 (5) (a) of the Statues (sic) of University, Sikkim University Act, 2006, which clearly says that the Registrar shall have power to take disciplinary action against the employees **excluding teachers and other academic staff**. This clearly shows that the Registrar is not a competent authority to issue show cause notice to the academic staff.

In the last, I would also like to correct you on the naming of my department. I am teaching

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in the **Dept. of Peace and Conflict Studies and Management** not what you have written **Dept. of Peace, Conflict and Security Studies**.

With my sincere regards

Sincerely yours

Sd/-

(Rajendra Prasad)  
Assistant Professor  
Dept. of Peace and Conflict Studies and Management  
Sikkim University

Copy to:

1. PS to Vice Chancellor
2. PS to Registrar
3. Email copy to Six Colleagues, who signed on the Petition to Executive Council mentioning irregularities in the teaching faculty appointment."

**(xv)** The second meeting of the Second Executive Council held on 16-03-2012 at New Delhi, after thorough deliberations, decided that the services of the Petitioner and another Faculty Member should be discontinued with effect from the afternoon of that day on the ground of misconduct. Accordingly, the impugned order of termination was issued on the very day by the University.

**(xvi)** The question that would then require determination is as to whether or not the procedure by



which the service of the Petitioner was terminated satisfies the requirement of the provisions of the Statutes. Clause 26 of the Statutes and the Sub-Clauses thereunder, relevant for the purpose on the question under consideration, are reproduced below: -

"26. (1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of the teacher or a member of the academic staff, and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made :

**Removal of  
the  
employees  
of  
the  
University**

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(3) Save as aforesaid, the Executive

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Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months notice or on payment of three months' salary in lieu thereof.

(4) No teacher, member of the academic staff or other employee shall be removed under Clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign,-

(a) if he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after giving one month's notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof:

Provided that such resignation shall



take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority, as the case may be."

**(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.

**(xviii)** The anxiety of the Second Executive Council is found clearly reflected in its agenda note 12.10.3 of its meeting dated 16-03-2012 where it has been noted that "the remaining two Shri Rajendra Prasad and Dr Manoranjan Mishra have now started instigating students and allegedly writing all kinds of canards in various places against the University without any basis" which was considered to be a serious breach of trust, confidence and Service Rules and also display of serious misconducts keeping in view the highly disciplined, accountable and transparent practices maintained by the University since its very inception. I, therefore, do not find any illegality in the order of termination as alleged by the Petitioner.

(xix) As regards the want of quorum of the meeting of the Executive Council held on 22-02-2012, the Petitioner appears to be clearly misconceived. From the records and the pleadings on behalf of the Respondents No.1 and 2, the total Members of the Executive Council existing at the time when the meeting dated 22-02-2012 took place was 9 (nine) instead of 10 (ten) which included 8 (eight) Members nominated by the Visitor and the Vice Chancellor. The nominations from the UGC was received by the University only one day before the meeting on 21-02-2012 and, was notified after the meeting on 29-02-2012. Thus, only 6 (six) Members were required to fulfil the quorum in the Executive Council Meeting held on 22-02-2012 and not 7 (seven) as asserted by the Petitioner. This also can be deduced from Clause 11(3) of the Statutes of the Sikkim University Act, 2006, which provides that 12 (twelve) Members out of total of 20 (twenty) or two-third of the existing Members of the Executive Council shall form a quorum for a meeting of the Executive Council. The contention is, therefore, not correctly founded.

(xx) Having dealt with the merit of the allegations, we may now consider the preliminary objections raised on behalf of the Respondent-University on the maintainability of the Writ Petition and the *locus standi* of the Petitioner to prefer it.

(xxi) As noted already, it is the case of the Respondent-University that the Petitioner is a failed candidate who being fully aware of the terms of the Appointment Notice had willingly participated in the recruitment process and taken a calculated chance to get selected. When it is the Petitioner's own case that it had taken almost a couple of years for the recruitment process to conclude, it is not understood as to why he had not raised any question during the entire period, be it the question of reservation, the venue, the constitution of the Selection Committee, non-compliance of the various guidelines and instructions, delay in holding the interview and the additional test in computer, etc. It was only after he had failed to succeed in getting himself selected that he chose to question the entire process as being illegal on various grounds. It is trite that the result of the interview

cannot be successfully challenged by a candidate who takes a chance to get selected at the interview and who ultimately finds himself to be unsuccessful. The Writ Petition, therefore, should be dismissed on the ground of estoppel.

**(xxii)** In *University of Cochin, represented by its Registrar, University of Cochin vs. N. S. Kanjoonjamma and Others : (1997) 4 SCC 426* wherein similar facts and circumstances were involved, it was held that where the Petitioner having applied for and sought for selection but remained unsuccessful, it was held that having participated in the selection, the Petitioner is estopped from challenging the correctness of the procedure. This is a well-settled principle laid by catena of decisions, some of which have also been cited at the bar on behalf of the Respondent-University. We have dealt with *Krishan Yadav (supra)* and have held that the facts and circumstances being different and clearly distinguishable, it has no application to the case at hand.

(xxiii) The next is the failure on the part of the Petitioner to implead the then Vice Chancellor, Prof. Mahendra P. Lama and the then Registrar, Dr. Jyoti Prakash Tamang of the University, against whom allegations of *mala fides* have been made. In the first instance when such charges are made, it is incumbent upon the Petitioner to have impleaded them in order to enable them to respond. Since this has not been done, the Writ Petition suffers from a serious infirmity of non-joinder of necessary parties. Secondly, the plea of *mala fides* can be easily made but difficult to prove. The allegations on the face of the pleadings are manifestly presumptuous and not founded on any cogent and tangible facts. Apart from alleging baldly that the Vice Chancellor had overtaken the powers of the Executive Council in appointing the Selection Committee with the intention to select his own favourites, it is not stated as to whom the favourites were amongst those who were selected. *Mala fides* has not only to be pleaded but, also proved.

(xxiv) In *E. P. Royappa vs. State of Tamil Nadu and Another* : (1974) 4 SCC 3, a Constitution Bench of the

Hon'ble Supreme Court held that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. It has further been held that circumstances may create suspicion but suspicion cannot take the place of proof and, the proof needed here is of high degree. This, would have application with full force in the present case, when the Petitioner himself had once served as Assistant Professor, has flung a series of charges of serious conduct against the Vice Chancellor and other Authorities of the University.

**(xxv)** In *M. Sankaranarayanan, IAS vs. State of Karnataka and Others : (1993) 1 SCC 54*, it has been held and it may not always be possible to demonstrate malice in fact with full and elaborate particulars and, it may be permissible in an appropriate case to draw reasonable inference of *mala fide* from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or

conjecture. In the instant case, we are unable to find sufficient materials from which a reasonable inference of malice in fact for non-selection of the Petitioner and issuance of the termination order, can be drawn. Apart from this, there are of course, other decisions cited at the bar on behalf of the Respondent-University, namely, *I. K. Mishra (supra)* and *Chandra Prakash Singh (supra)*. Thus, apart from the contention of *mala fides* having not been satisfactorily proved, the Writ Petition would also suffer from the vice of non-joinder of the then Vice Chancellor, Prof. Mahendra P. Lama and the then Registrar, Dr. Jyoti Prakash Tamang of the University, as parties to the Writ Petition.

**(xxvi)** The Writ Petition also suffers from the same vice of non-joinder of the necessary parties also for the reason that when the prayer is for quashing the entire recruitment process, i.e., seeking for an order adverse to all those who had been successful in such process, they must necessarily be joined as parties in the interest of justice. This, having not been done, the Writ Petition would be rendered flawed fatally. On this,



amongst the various decisions, we may refer to ***Udit Narain Singh Malpaharia (supra)*** and ***Shridhar (supra)***.

**(xxvii)** Besides, the serious infirmity of non-joinder of necessary parties, want of *locus standi* and the waiver by principles of estoppels and acquiescence, the Petitioner, as noted earlier, is also guilty of suppression of material fact for having not disclosed that he had faced charge of serious breach of conduct of rushing to the Press making unfounded allegations without waiting for the outcome of his representation submitted to the Members of the Second Executive Council. He ought to have disclosed that he had been provided with an opportunity to defend himself when a show cause notice was issued him to which he admittedly had responded. However, as noted already, in his reply the Petitioner, instead of explaining his position, had chosen to adopt a confrontationist attitude, unwarrantedly questioning the Authority of the Vice Chancellor and the Registrar to issue the show cause notice and, that the order of his termination was issued only thereafter by a decision of the Executive Council Meeting. Instead the Petitioner has endeavoured to

give an impression that the order of his termination was issued only for having made a representation to the Members of the Second Executive Council. The Petitioner having thus approached this Court seriously lacking in honesty, does not deserve the discretionary relief in a proceeding under Article 226 of the Constitution of India.

**(xxviii)** It is also pertinent to note that indisputably the Sikkim University which lies in the hinterland of the country, is in its nascent state endeavouring to overcome the initial hurdles in its growth. It would, therefore, be a travesty of justice to allow a recalcitrant like the Petitioner to scuttle such efforts on grounds which are unsustainable even on its merits.

**6.** The Petitioner has relied upon a large number of decisions on the various aspects advanced by him which are as under: -

- i. ***Dr. Suresh Chandra Verma and Others* vs. *The Chancellor, Nagpur University and Others* : (1990) 4 SCC 55 [supra];**
- ii. ***University Grants Commission and Another* vs. *Neha Anil Bobde (Gadekar)* : (2013) 10 SCC 519 [supra];**

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- iii. ***University of Delhi vs. Raj Singh and Others : 1994 Supp (3) SCC 516*** [supra];
- iv. ***Rakhi Ray and Others vs. High Court of Delhi and Others : (2010) 2 SCC 637*** [supra];
- v. ***Raj Kumar and Others vs. Shakti Raj and Others : (1997) 9 SCC 527*** [supra];
- vi. ***Davinder Singh and Others vs. State of Punjab and Others : (2010) 13 SCC 88*** [supra];
- vii. ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidhalaya (D.ED.) and Others : (2013) 10 SCC 324.***

However, having regard to the facts and circumstances of the present case dealt with in detail earlier, these would not be applicable here and are of no assistance to the Petitioner.

7. The substantive prayers in the Writ Petition are for quashing (i) the selection process and, (ii) the order of termination of the Petitioner. In so far as the first prayer is concerned, it has already been held that there was no illegality committed by the Respondents No.1 and 2 in the recruitment process as alleged by the Petitioner and also that the Petitioner having acquiesced in the position, had waived his right to question the selection process. As regards the second

prayer also, it has been held that the order of termination of the Petitioner was issued in due compliance of the procedure laid down in the relevant Statutes and Act of the Sikkim University and was not arbitrary. It would also be significant to note that the Petitioner was a contractual employee the term of which expired on 31-03-2012. Therefore, the prayer for reinstatement of the Petitioner in service with back wages could not have been allowed. Although the termination was effective from 16-03-2012, the salary for the remaining period also had been paid to him and was issued with an experience certificate sought for by him by orders of this Court details of which shall be stated hereafter.

**8.** The Writ Petition thus fails on account of both its merit and its maintainability.

**9.** In the result, the Writ Petition is dismissed.

**10.** However, before parting, it is observed that quite apparent from the records, the Petitioner was terminated from his service on 16-03-2012 when his contractual tenure was to end 15 (fifteen) days later,

i.e., on 31-03-2012. 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. In view of this and in view of the fact that the Petitioner is a young person with aspirations for future employment, in the interest of justice, the Respondent-University shall consider converting the order of termination of his contractual service dated 16-03-2012 as termination simplicitor by deleting the last words "on grounds of misconduct".

**11.** No order as to costs.

**( S. P. Wangdi )**  
**Judge**

17-04-2015

Approved for reporting : **Yes**

Internet : **Yes**