

WP (C) No. 59/2016
Kiran Adhikari & Anr. vs. State of Sikkim & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ

05. 24.05.17 Present: Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Hemlata Sharma and Ms. Aruna Chhetri, Advocates for the Petitioners.

Mr. J. B. Pradhan, Addl. Advocate General with Mr. S.K. Chettri and Mrs. Pollin Rai, Assistant Government Advocate, Mr. Bhusan Nepal, Advocate (HRDD, R-1) and Mr. J.K. Kharka, Advocate (SPSC, R-2) for the Respondents No. 1 and 2.

Mr. Zangpo Sherpa, Mr. Sangay G. Bhutia and Mr. Jushan Lepcha, Advocates for Respondents No. 3, 4, 5 and 6.

Smt. Annapurna Alley, Joint Secretary (Adm.), HRDD, Mr. Sonam Lepcha, J.D./North, HRDD, Ms. Tshering Eden, J.D./West, HRDD, Mr. Sonam Denzongpa, J.D./East, HRDD, in-person.

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The petitioners, working as Government teachers in different subjects, have come up with this petition assailing the selection of the third to sixth respondents for appointment on the post of Headmaster, Secondary School in the State of Sikkim. The principal submission of the petitioners is that the private respondents working as Headmaster, Junior High School were not eligible for consideration and selection for appointment on the post of Headmaster, Secondary School against 50% seats reserved by promotion of Graduate Teachers/Post Graduate Teachers. Thus, their selection be cancelled and a direction be issued to the official respondents to appoint the petitioners on the said post. Referring to the

advertisement dated 17.11.2014, whereby applications were invited from in-service teachers working in Government Schools for appointment on the post of Headmaster, Secondary School, in addition to appointment on the post of Principal, Senior Secondary School, it is further contended that the total vacancy advertised for selection and appointment on the post of Headmaster, Secondary School was 20. Under eligibility criteria, 50% of the total seats were reserved for appointment by promotion of Graduate Teachers and Post Graduate Teachers and the remaining 50% by promotion of Headmaster of Junior High School and Assistant Education Officer.

2. It is next urged by Mr. A.K. Upadhyaya, learned Senior Counsel appearing for the petitioners that the private respondents 3 to 6 were working as Headmaster of Junior High School and as such they were not eligible to apply for selection to the post of Headmaster, Secondary School against 50% seats reserved for Graduate Teachers/ Post Graduate Teachers by way of promotion. It is also submitted that their selection to the post be quashed and the petitioners be appointed against the vacancy.

3. During currency of the petition, the candidature of the private respondents 3 to 6 for selection was cancelled by communication dated 11.02.2017. Thus, the first issue as to whether the private respondents 3 to 6 were eligible

for consideration against the 50% seats reserved for Graduate Teachers/ Post Graduate Teachers has come to an end and the issue has become academic.

4. It is well-settled that a disputable legal issue cannot be adjudicated for want of factual matrix in the case. Thus, I am constrained to observe that the issue has become infructuous, as being academic. The petitioners are also not pressing the same at present.

5. In respect of second issue, i.e. whether a direction be issued to the official respondents to appoint petitioners, it is well-settled that no direction for appointment to a post can be given unless it is made out strongly on the basis of cogent and sufficient reasons.

6. In the case on hand, since the candidature of the private respondents stand cancelled, Mr. Upadhyaya, learned Senior Counsel appearing for the petitioners seeks permission of this Court to make representation seeking appointment to the authorities, to which there is no objection from other side and accordingly, the petitioners are at liberty to make representation, if so advised, in accordance with law. In the event, a representation is made, the official respondents are advised to consider the same, in accordance with law, on its own merit.

7. Mr. Zangpo Sherpa, learned Counsel appearing for the private respondents 3 to 6 submits that the authorities

had taken a decision for cancellation of the candidature during pendency of the case, when this Court observed that the appointment of the private respondents shall be subject to final outcome of the writ petition, by an order dated 29.11.2016. The private respondents have made a representation to the authorities questioning the order of cancellation, dismissal of the petition may come in the way of consideration of their representation, pending before the authorities.

8. Considering all aspects of the matter, it is made clear that the writ petition is disposed of on having become infructuous and as such the same will not come in the way of consideration of the representations, if any, made by the respondents 3 to 6, on its own merit, in accordance with law.

9. With the aforesated observations, the petition stands disposed of, however, no order as to costs.

Chief Justice
24.05.2017

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Index : ~~Yes~~ / No
Internet : Yes / ~~No~~