

IN THE HIGH COURT OF SIKKIM

1. Writ Petition (C) No.9 of 2000

Prakash Chettri

... Petitioner

Versus

1. The State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Tashiling,
Gangtok.
2. The Commissioner-cum-Secretary,
Department of Personnel,
AR & Training,
Government of Sikkim,
Tashiling Secretariat.
Gangtok.
3. Mr. T. R. Khanal,
Assistant Engineer,
Education Department,
Tashiling, Gangtok.
4. Mr. N. L. Chettri,
Assistant Engineer (Civil),
Gangtok Sub-Division,
Power Department, Gangtok.
5. Mr. P. K. Sharma,
Assistant Engineer, R.D.D.
Rongli Sub-Division,
East Sikkim.
6. Mr. Homnath Sharma,
Assistant Engineer,
Building & Housing Department,
Singtam Sub-Division,
East Sikkim.
7. Mr. K. B. Chettri,
Assistant Engineer,
Education Department,
Tashiling, Gangtok.
8. Mr. P. V. Kuruvilla,
Assistant Engineer,
Urban Dev. & Housing Department,
Gangtok.



- 9. Mr. K. J. Cherian,
Assistant Engineer,
R.D.D. Namchi,
South Sikkim.
- 10. Mr. B. K. Rai,
Assistant Engineer,
R. & B (Sub-Division-IV),
Gangtok, East Sikkim.
- 11. Mr. K. K. Sharma,
Assistant Engineer (Planning),
Building & Housing Department,
Jorethang, South Sikkim.
- 12. Mr. G. P. Shrestha,
Assistant Engineer (Planning),
Building & Housing department,
Jorethang, South Sikkim.
- 13. Mr. M. R. Gurung,
Assistant Engineer,
Irrigation Department,
Gangtok, East Sikkim.
- 14. Mr. R. K. Pradhan,
Assistant Engineer,
Irrigation Department,
Gyalshing, West Sikkim.
- 15. Mr. K. K. Pradhan,
Assistant Engineer,
Building & Housing Department,
Namchi, South Sikkim.
- 16. Mr. Damber Chettri,
Assistant Engineer (Planning),
Building & Housing Department,
Gangtok, East Sikkim.
- 17. Mr. P. N. Pradhan,
Assistant Engineer,
R.D.D. Kaluk Sub-Division,
West Sikkim.
- 18. Mr. P. K. Bhujel,
Assistant Engineer,
R & B,
Ravangla, South Sikkim.
- 19. Mr. Bijendra Prasad,
Assistant Engineer,
Health Department,
Gangtok, East Sikkim.



6. Writ Petition (C) No.14 of 2000

Lakpa Sherpa ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

7. Writ Petition (C) No.15 of 2000

Praveen Kumar Pradhan ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

✓ 8. Writ Petition (C) No.16 of 2000

Lendup Dorjee Lamiha ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

9. Writ Petition (C) No. 17 of 2000

Dorjee Dadul ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

10. Writ Petition (C) No.18 of 2000

Asha Gurung ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

11. Writ Petition (C) No. 19 of 2000

C. K. Das ... Petitioner

Versus

State of Sikkim & Others ... Respondents.



12. Writ Petition (C) No.20 of 2000

O. P. Sharma ... Petitioner

Versus

State of Sikkim & Others ... Respondents.

Date of Decision : 16th August, 2000.

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice
The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. Bhaskar Raj Pradhan, Advocate for the petitioner.

Mr. S. P. Wangdi, Advocate General with
Mr. Karma Thinlay, Assistant Government
Advocate for respondent Nos. 1 and 2.

Mr. K. T. Bhutia, Advocate for the
respondent Nos. 3 to 8, 10 to 21 and 23.

JUDGMENT

Dayal CJ.

All these writ petitions concern the fixation of seniority between the direct recruits and the promotees holding the posts of Assistant Engineers (Civil) in the Sikkim State Engineering Service constituted under the Sikkim State Engineering (Civil, Electrical & Mechanical) Services Rules, 1989 (hereinafter referred as the Rules) and are disposed of by this Judgment. Petitioners are the direct recruits and respondents 3 to 23 are the promotees.

2. Rule 7 of the Rules provides for the method of recruitment and reads as under :

"7. Method of Recruitment.-



(1) Subject to rule 6, recruitment to the Service after the appointed day, shall be by the following methods, namely :-

(a) By direct recruitment through a competitive examination and/or selection by interview to be held by the Commission.

(b) By promotion through limited departmental Competitive Examination to be held by Commission from among persons holding the post of Junior Engineer or any other post or posts declared equivalent thereto by the Government.

(2) The proportion of vacancies to be filled in any year in accordance with clauses (a) and (b) of sub-rule 1 shall be 66 2/3 : 33 1/3 respectively subject to review as the Government may deem fit :

Provided that the number of persons recruited under clause (b) of sub-rule 1 shall not at any time exceed 33 1/3 per cent of the total strength of the Service."

Rule 30 relates to the power of relaxation by the Government and provides that where "the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or post". In exercise of the power conferred by Rule 30, the State Government issued Notification No.20/GEN/EST dated 25-6-1990, in order to remove stagnation in promotion of Junior Engineers, to relax the provisions of sub-rule (2) of Rule 7 of the rules and decided that the proportion of the vacancies to be filled in accordance with Clauses (a) and (b) of sub-rule (1) of Rule 7 in the year 1990-91 shall be as follows :-

"(a) in respect of the post of Assistant Engineer
(Civil) 37 1/2 : 62 1/2, respectively ;
....."

7

3. An advertisement dated 5.2.1991 was issued by the Government inviting applications from the Junior Engineers to appear before the Selection Board to appear in an interview for preparation of panel of names of Junior Engineers (Civil) to the post of Assistant Engineers (Civil) in the Sikkim State Engineering (Civil) Service on 21st, 22nd and 23rd March, 1991. As per the minutes of the meeting of the Selection Board held on 10th, 11th and 12th April, 1991 (vide Annexure R3), 25 Junior Engineers were selected for promotion to the posts of Assistant Engineers. It is not disputed that all these 25 persons were promoted with effect from 12th July, 1991. It is also not disputed before us that 15 direct recruits were appointed on different dates in December, 1990 and January, 1991. A provisional seniority list was prepared in the year 1997 which is Annexure D to the writ petition. In that seniority list, 13 direct recruits were placed at serial numbers 26 to 38 and all the promotees were placed below them, except for Sunil Pradhan, who was also a direct recruit but who was wrongly placed much below the promotees at serial number 70. Sunil Pradhan filed writ petition bearing No.460 of 1998 (Sunil Pradhan versus State of Sikkim). By judgment dated 6th May, 1999, Sunil Pradhan was held entitled to be placed in the seniority list in accordance with merit, he secured at the time of his selection by the Sikkim Public Service Commission and accordingly a direction was issued to do so within one month. Thereafter, another provisional seniority list






was prepared in the year 1999 to give effect to the decision of the Court in the aforesaid writ petition No.460 of 1998. But while doing so, almost the entire seniority list prepared in the year 1997 was changed in such manner that first three direct promotees were placed in the seniority list above the direct recruits and thereafter, two promotees were placed. For example, at serial numbers 27, 28 and 29 promotees were placed and thereafter, at serial numbers 30 and 31 direct recruits were placed. It is this seniority list which has been challenged by all the petitioners before us.

4. Mr. Bhaskar Raj Pradhan, learned Counsel appearing on behalf of the petitioner has made three submissions before us :-

- (i) The High Court had while delivering judgment in writ petition No.460 of 1998 (Sunil Pradhan versus State of Sikkim) directed refixation of the seniority only of Sunil Pradhan and there was no justification for the Government to change the entire seniority list;
- (ii) direct recruits were appointed prior to the appointment of the promotees and they ought to have been placed above the promotees;
- (iii) even if seniority had to be fixed in accordance with the quotas of vacancies available for the direct recruits and the promotees, the direct recruits should have been placed in the seniority list above the promotees.

5. As regards the first point, we see no merit at all. There is no dispute that the seniority list of 1997 was provisional. When it came to the notice of the Government that it needed change, it was open to the Government to do

so. The provisional seniority list did not confer any right on anyone as regards placement in the seniority list.



6. As regards the second point, there is no dispute that the direct recruits were appointed prior to the promotees. But mere length of service is not the only relevant criterion for fixation of seniority where the appointment is made in accordance with the quotas of the vacancies reserved for two categories of persons. It is admitted before us that relevant rules regarding fixation of seniority are contained in the Sikkim State Services (Regulation of Seniority) Rules, 1980 hereinafter referred as Seniority Rules. Rule 4(e) of these Rules states :-

"4(e) the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees and shall be determined by the dates of their substantive appointment to the Service."

7. It is not disputed before us that all the appointments both of direct recruits and the promotees were substantive appointments. The quotas fixed by Notification dated 25th June, 1990 were 37 1/2 : 62 1/2 for the direct recruits and the promotees respectively. Appointment process for both the sources was started and completed substantially in the same financial year, that is, 1990-91. This was so as not only the advertisement was issued in that financial year, but the interviews were also held in that year. As per Rule 2(m) of the Rules "Year" means the financial year commencing on the 1st day of April and ending on 31st day of March next



following. Therefore, the seniority was required to be fixed in accordance with the quotas fixed as per the Notification dated 25th June, 1990 and while doing so, only substantive appointments were to be taken into consideration. Since all the appointments were substantive, the later part of sub-rule (e) of Rule 4 is of little relevance for the instant cases.

8. As regards the third point, it is submitted on behalf of the petitioners that in accordance with the seniority rule, direct recruits should have been placed above the promotees in proportion to the vacancies reserved for them. He submits that fixation was done wrongly in the seniority list of the year 1999, inasmuch as, promotees were placed above the direct recruits. For example, at serial numbers 27, 28 and 29 promotees were placed and it was thereafter that two direct recruits were placed at serial numbers 30 and 31. The learned Counsel submits that direct recruits should have been placed at serial numbers 27 and 28 and promotees should have been placed at serial numbers 29, 30 and 31. We see no merit in this submission. The expression in Rule 4(e) that the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, in the absence of any rule providing whether direct recruits should be placed above or below the promotees implies that the direct recruits should be placed above the promotees. To

11

this extent, the seniority list of 1999 requires to be revised and recast.

In the result, the writ petitions are allowed partially, and it is directed that the provisional seniority list of the members of the Sikkim State (Civil) Engineering Service prepared in the year 1999 being Annexure-"E" to the writ petition shall be revised and recast so as to place the two direct recruits at serial numbers 27 and 28 and thereafter, three promotees at serial numbers 29, 30 and 31 and to place the other members of the service in that manner. This be done within a month from today. There shall be no order as to costs.

The judgment be placed on the record of Writ Petition No.9/2000 and a certified true copy be placed on the records of the other Writ Petitions.

Sd/- 16/08
(Anup Deb)
Judge
16.08.2000

Sd/- 16/08/2000
(R. Dayal)
Chief Justice
16.08.2000

CERTIFIED TO BE TRUE COPY

At1/


ASSISTANT REGISTRAR (JUDICIAL)
HIGH COURT OF SIKKIM
AT GANGTOK