

**IN THE HIGH COURT OF SIKKIM AT GANGTOK**

*Writ Petition (C) No.2 of 2002.*

Shri J. B. Khatri

... Petitioner.

**-versus-**

1. State of Sikkim through Chief Secretary,  
Government of Sikkim, Gangtok.
2. Secretary, Department of Personnel, A.R. &  
Training, Government of Sikkim, Gangtok.
3. Secretary, Department of Education,  
Government of Sikkim, Gangtok.
4. Secretary, Department of Sikkim Nationalised  
Transport, Government of Sikkim, Gangtok.
5. Secretary, Department of Finance,  
Government of Sikkim, Gangtok. ... Respondents.

Present : Mr. B. Sharma, Advocate for the petitioner.

Mr. S. P. Wangdi, Advocate General with Mr. J. B.  
Pradhan, Govt. Advocate for the respondents.

**Date of decision: 04-12-2002.**

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

**Dayal, C.J.**

The petitioner entered into Government service as a Primary School Teacher on 22-08-1973. He was transferred to Sikkim Nationalised Transport on 28-02-1979 as Assistant Auditor having pay scale identical to that of a Primary Teacher. In 1982, the Government elevated many of the local graduates to the posts of gazetted officers. The

*M. Singh*

petitioner was not successful in getting such an appointment. In 1983, the Sikkim Civil Service Examination was held. The petitioner competed in that examination but he secured 30<sup>th</sup> position in the list of 31 successful candidates. Out of the said list only 6 were initially appointed and the 7<sup>th</sup> successful candidate was also appointed subsequently from the said panel which lasted till a new panel was prepared in 1985. The allegation of the petitioner was that many persons were given appointment as gazetted officers ignoring the claim of the petitioner. Hence, he went on representing to higher authorities including the Chief Minister for getting a chance as a gazetted officer. On 27-01-1984 he was offered appointment as Auditor in Sikkim Nationalised Transport, but he did not accept the same as he wanted nothing less than a gazetted post. With effect from 23-04-1984 he was appointed Assistant Manager in SIMFED, a Government undertaking in the scale of lowest gazetted officer for two years. He went on persuading the Government for providing a gazetted post. Ultimately, Memorandum No.1413/GEN/EST dated 17-07-1986, Annexure R-2, was issued by the Government to the following effect:-

“With reference to his representation dated 22.5.86 addressed to the Hon’ble Chief Minister, the undersigned is directed to inform him that his request for Gazetted grade from the date he joined the SIMFED is accepted by the Government and that his promotion in the State Govt. will be considered on the basis of his seniority in the grade of Accountants/Senior Accountants.”

He filed writ petition No.5 of 1994 before this High Court which was decided on 01-06-1995. By that Judgment, the State respondents were directed to implement their memorandum dated 17-07-1986 and give all the benefits to him in terms thereof. Subsequently, the petitioner filed Civil Misc. Case No.1 of 1996 and Criminal Misc. Case No. 1 of 1996

*M. S. M.*

which were disposed of by this Court on 21-09-1996. A copy of the judgment is annexed as R-3. In that judgment, the Memorandum dated 17-07-1996 came in to be interpreted. It was held that the expression "gazetted grade" in the memorandum did not mean gazetted post or rank and it only meant gazetted scale of pay. It was, therefore, held that the petitioner would continue to have gazetted scale with effect from 23-04-1984 the date when he joined SIMFED as Assistant Manager with necessary annual increments and availing of the benefit of revision of the scale, if any, but for the purpose of seniority etc., necessary for subsequent promotion, his substantive post should be held as that of Senior Accountant. The decision to the effect that his substantive post for promotion was to be deemed to be that of Senior Accountant was never annulled or modified in any manner by any subsequent decision on the judicial side. Learned counsel for the petitioner admits that no order of promotion was also ever passed by the Government. Even then the petitioner is making his claim for holding the higher post in gazetted grade. By this writ petition, the petitioner has challenged office orders/letters Annexures P-1, P-2 and P-3. Annexure P-2 is letter No.15909/G/DOP dated 26-02-2001 issued by the Government of Sikkim, Department of Personnel, A.R. & Training communicating to the petitioner that his claim for his inter-se seniority in the Sikkim Nationalised Transport had not been supported by the relevant gazette notification. By Annexure P-1, which is an office order No.36/Fin/SSAS dated 17-03-2001 issued by the Finance Department, Government of Sikkim, the petitioner was transferred and posted as Senior Accountant at Pay & Accounts Office, Mangan against the vacant post. By

*M. S. M.*

Annexure P-3, bearing No.6948/(G)/DOP dated 14-08-2001 the petitioner was communicated that his seniority had been fixed as Senior Accountant under the Sikkim Subordinate Accounts Service. The petitioner has challenged these orders claiming that since he is drawing gazetted scale, he is entitled to hold a gazetted post relevant to that scale. He has also claimed that he should be inducted in the State Civil Service cadre in the same manner in which 10 persons were inducted vide Notification dated 20-07-2001, Annexure P-11.

2. I have heard Shri B. Sharma, Advocate for the petitioner and Shri S.P. Wangdi, learned Advocate General on behalf of the State. As regards the claim of the petitioner for induction into the State Civil Service, the Notification dated 20-07-2001 published in the Sikkim Gazette on 31-07-2001, Annexure P-11, shows that 10 persons named therein were absorbed in the State Civil Service for the reason that the Government considered it expedient to absorb them as they did not belong to any organized service and they should have been inducted in the State Civil Service in 1993 when mass induction took place in the Sikkim State Civil Service and having regard to their holding analogous posts as held by the members of Sikkim State Civil Service Officers. It cannot be said that the petitioner who was held by the judgment dated 21-09-1996 to be entitled only to the gazetted scale and not to a gazetted post and who did not hold any analogous post in terms of the notification dated 20-7-2001 (Annexure P-11) fell in the same class in which the 10 persons named in that notification fell. Furthermore, this relief is inconsistent with the judgment of this Court dated 21-09-1996 according to which the petitioner was held entitled to the gazetted scale and not a gazetted post.

*M. S. Sanyal*

3. Learned counsel for the petitioner submits that vide Order No.300/G/DOP dated 30-05-1996, Annexure P-5, the petitioner was transferred as Assistant Superintendent Transport, Sikkim Nationalised Transport, Gangtok which is a gazetted post and as such the petitioner should be held entitled to that post. Vide Order dated 13-08-2002, the Government was required to clarify as to how the petitioner was transferred to a gazetted post. Thereafter, an affidavit dated 29.8.2002 has been filed by Smt. D.L. Lama, Additional Secretary, Department of Personnel, A.R. & Training to the effect that earlier the petitioner was holding the post of Private Secretary to the Adviser of Govt. of Sikkim which was a co-terminus post and since that post was a gazetted post, the Order dated 30-5-1996 was issued posting the petitioner as Assistant Superintendent Transport, Sikkim Nationalised Transport by mistake and inadvertence. It is manifest that this order was issued earlier to the date of Judgment dated 21-09-1996 and so this office order cannot cloud in any manner the judgment of the Court. Once it has been held by this Court vide judgment dated 21-09-1996 that the petitioner is entitled to only gazetted scale and not a gazetted post and his substantive post is to be taken as of Senior Accountant for subsequent promotion, his claim for higher post without any order of promotion being passed is to be adjudged only as frivolous. As such, there is no merit in the petition.

In the result, the petition is dismissed with cost of Rs.10,000/-  
(Rupees ten thousand).

*R. Dayal*  
4.12.2002

**(R. Dayal)**  
**Chief Justice**  
04-12-2002.