

**THE HIGH COURT OF SIKKIM : GANGTOK**

**WRIT PETITION (C) NO. 20 OF 2003**

In the matter of a petition under Article 226 of  
the Constitution of India

and

in the matter of

Padam Bahadur Chettri,  
S/o Shri Devi Lall Chettri,  
R/o Sakyong Busty,  
P.O. Geyzing - 737 111,  
West Sikkim

.... **Petitioner**

**VERSUS**

1. The Secretary,  
Department of Personnel, Administrative  
Reforms & Training,  
Government of Sikkim,  
P.O. Gangtok - 737 101,  
East Sikkim.
2. The Secretary,  
Education Department,  
Government of Sikkim,  
P.O. Gangtok - 737 101,  
East Sikkim.
3. The Sikkim Public Service  
Commission represented by and  
through its Chairman having  
office at Old West Point School,  
Below Private Bus Stand,  
P.O. Gangtok - 737 101,  
East Sikkim.
4. Dasrath Kharel,  
Ad-hoc Lecturer, Nepali  
Sikkim Government College at  
Namchi, P.O. Namchi,  
South Sikkim.
5. Parsuram Poudyal,  
Ad-hoc Lecturer in Nepali,  
Sikkim Government College at  
Tadong, P.O. Tadong,  
Gangtok, Sikkim.

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6. Namrata Thapa,  
W/o Dr. J.P. Tamang,  
Ad-hoc Lecturer,  
Sikkim Government College,  
Tadong, P.O. Tadong,  
East Sikkim.
7. The Selection Committee for  
Selection of Lecturers in Sikkim  
Government College through its Chairman,  
Shri Ranjit Pradhan, Chairman of  
Sikkim Public Service Commission,  
Old West Point School,  
Below Private Bus Stand,  
P.O. Gangtok - 737 101,  
East Sikkim.

..... **Respondents**

- For the petitioner : A. Moulik, Advocate.
- For the respondents 1, 2, 3 & 7 : Messrs S.P. Wangdi, Advocate-  
General with J. B. Pradhan,  
Government Advocate.
- For the respondents 4 & 5 : A.K. Upadhyaya, Advocate.

**PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.  
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.**

**Date of judgment: 21<sup>st</sup> May, 2004.**

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

**R. K. PATRA, C.J.**

By this writ petition the petitioner seeks to assail the validity of selection and consequential appointment of respondents no. 4 and 5 as lecturers in Nepali and respondent no. 6 as lecturer in Zoology in the Government Degree Colleges of Sikkim.

2. Briefly stated, the petitioner's case is that he is a "Sikkimese candidate" within the meaning of rule 4(4) of the Sikkim Government Establishment Rules, 1974. He possesses the degree of M.A. in Nepali Literature in First

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Class with 63.25% marks from the Benaras Hindu University. He has also qualified himself with the certificate of National Eligibility Test (hereinafter referred to as NET). He has a good academic record in view of the fact that he passed class XII examination with 59.6% marks and B.A. Honours in Nepali language with 57.8% marks. He came to be first appointed as a lecturer in Nepali Literature in Sikkim Government College at Tadong on part-time basis on a monthly honorarium of Rs.2,400/- for the period 19.2.2001 to 30.6.2001. This appointment was extended till 30.6.2003. The University Grants Commission Regulations, 1991 lay down that for appointment to the post of lecturer in a college of regular establishment, a candidate should possess *inter alia* good academic records with at least 55% marks in the relevant subject at Master's degree level together with the qualification of NET or the State Level Eligibility Test (SLET). Besides the above, the candidate should have also Honours at degree level. Contrary to this, serial no. 8 of the schedule annexed to the Sikkim Government College Lecturers Recruitment Rules, 1992 (in brief the Recruitment Rules) makes departure to the stipulation of holding of Honours at degree level, by making it as a 'desirable' qualification and not an 'essential' one.

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The Sikkim Public Service Commission (hereinafter referred to as the PSC) issued advertisement no. 06/2001

dated 22.11.2001 (annexure 10) inviting applications from eligible candidates to fill up different posts of lecturers in the Education Department of the Government of Sikkim including four posts of lecturers in Nepali subject. In response to the advertisement, he applied for the post of lecturer in Nepali. He appeared in the interview conducted by the PSC and despite his good performance in the interview he was not selected whereas respondents no. 4 and 5 who are otherwise ineligible have been selected.

According to the petitioner, he being a "Sikkimese candidate" is entitled to be preferred to respondents no. 4 and 5 who are non-Sikkimese as indicated in the advertisement (annexure 10). Respondents no. 4 and 5 have no good academic records nor do they have Honours at degree level. As per the advertisement a candidate's age should be 35 years (relaxable by 5 years in respect of Sikkim government employees) as on 01.01.2001 but those respondents had already crossed the upper age limits. After the expiry of the last date of submission of applications (31.12.2001) an addendum to the previous advertisement was issued on 10.5.2002 (annexure 13) by the PSC relaxing the age limit by 10 years and extending the time for submission of application forms to 10.6.2002. The PSC is not competent to issue such addendum and it was done with a view to accommodate over-aged persons like respondents

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no. 4 and 5. In the interview no norm was evolved nor any guideline followed by the selection committee as to on what basis the merit of a candidate would be judged. The petitioner further suspects that he was not selected because one of the members of the Selection Committee (Puspa Sharma) had bias against him.

**3.** The state government has filed counter-affidavit denying the allegations of the petitioner. It has been stated that the petitioner applied for the post of lecturer in Nepali and has no locus standi to question the validity of the selection of respondent no. 6 who was an applicant for the post of lecturer in Zoology. It has been further asserted that the recruitment process for regular appointment of lecturers in the Sikkim Government Colleges was initiated in obedience to the direction of this Court contained in the order dated 17.3.2001 passed in writ petition no. (C) No. 66 of 2000. On consideration of the pros and cons of the issue relating to recruitment of lecturers, the department submitted the following proposals.

- “(a) to advertise all the vacancies of lecturers of the Sikkim Government College Tadong, Government College Namchi, Sikkim Govt. Law College, Gangtok and Sanskrit Mahavidyalaya, Gyalshing.
- (b) to relax the rules regarding reservation of posts in view of the fact that local candidates are not available for all the vacancies/posts advertised.

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- (c) to advise all the lecturers who are presently working on ad-hoc basis in the colleges to apply in response to the advertisement proposed to be issued."

The Secretary of the department while forwarding the above proposal to the government for approval, observed that in the past, lecturers were appointed annually on ad-hoc basis which has affected the quality of education particularly when the ad-hoc appointees were found to be not upto the standard. He accordingly suggested that to improve the quality and standard of education, teachers/lecturers should be appointed on regular basis. The said proposal was approved by the state government on 24.5.2001. Thereafter notification dated 24.9.2001 (annexure R3) was issued stating in paragraph 4 thereof that the orders regarding reservation of seats for SC/ST/OBC, women and other special category candidates shall not be applicable to the vacancies of post-graduate teachers and lecturers of colleges. As the above was issued inadvertently the state government issued another notification no. 755/Est-I/Edn. dated 25.3.2002 at annexure R4 substituting paragraph 4 (annexure R3). With regard to relaxation of age and extension of the last date for submission of applications the stand of the state government is that one Sanam Giri, ad-hoc lecturer of Degree College, Namchi who did not fulfil the eligibility criteria for appointment as lecturer filed writ

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petition no. 76 of 2001 in this Court. On account of the pendency of that case and for other various reasons the recruitment process with regard to appointment of lecturers got delayed. Due to the delay in filling up of the posts of lecturers in government colleges for several years, number of lecturers who were otherwise duly qualified and fulfilled the eligibility criteria had to continue in service on ad-hoc basis. No fault can be found with them in their continuance on ad-hoc basis because the delay had occurred at the government level. Therefore having regard to their plight and taking into other relevant factors into account the state government in exercise of powers conferred under rule 6 of the Recruitment Rules decided to relax the upper age limit prescribed for the post of lecturers by 10 years in respect of NET qualified persons who were working as lecturer on ad-hoc basis in any government colleges as one-time measure. Accordingly notification dated 30.4.2002 (annexure R5) was issued. The aforementioned decision of the government was published in the Sikkim Herald dated 10.5.2002 (annexure 13). The relaxation of age etc. was not done by the PSC as contended by the petitioner.

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Regarding the UGC relaxation, the state government in its counter-affidavit says that 1998 Regulations (annexure 12) were superseded by UGC Regulations 2000 (annexure R6). It was further amended by the Regulations in 2002

(annexure R7). As per the latest Regulations vide annexure R7 candidates who had submitted thesis to the university in their concerned subject on or before 2002 are exempt from appearing in the NET examination. So far as selection to the post of lecturers in Nepali is concerned it has been stated in the counter-affidavit that pursuant to the advertisement, although 14 persons applied, out of them 13 appeared in the interview. In the merit list the petitioner's position was at serial no. 7 whereas the position of respondent no. 5 was at serial no. 1 and respondent no. 4 at serial no. 3. As the petitioner's position was far below that of the respondents no. 4 and 5 in the merit list, he could not be selected.

**4.** At the outset, we reject the writ petition so far as it relates to respondent no.6 who has been selected as a lecturer in Zoology. The petitioner was not a candidate for the post of lecturer in Zoology. He has therefore no cause of action against her neither has he locus to question the validity of her selection.

**5.** Shri Moulik contended that the Honours at the degree stage being an essential qualification, the Recruitment Rules cannot substitute it by saying it as a desirable condition.

The Recruitment Rules have been made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. They deal with the method of

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recruitment to the posts of lecturers in the Sikkim Government Colleges under the Education Department of the Government of Sikkim. The eligibility conditions for the post of lecturer have been mentioned in the schedule appended to the Recruitment Rules. In serial no. 8 of the schedule, Honours at the degree level has been prescribed as a 'desirable' qualification. In support of his submission that Honours at degree level is an 'essential qualification', Shri Moulik placed reliance on the letter no. 3508 dated 11.12.2001 (annexure 5) written by the Registrar of the University of North Bengal to the Secretary of the PSC. By referring to the advertisement (annexure 10) the Registrar has asserted that for appointment of lecturers in affiliated colleges under the University of North Bengal, Honours at the degree level in the relevant subject is a 'must'. It may be stated that under the proviso to Article 309 of the Constitution, the Governor is competent to make rules regulating the recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the state. The said power is however subject to the provisions of the Constitution. So long as those rules are not inconsistent with the provisions of the Constitution they have to be taken as constitutionally valid. Merely because the government colleges of Sikkim are affiliated to North Bengal University, it cannot compel the

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government to modify the 'desirable qualification' to that of an essential one. In this matter, Shri Moulik also referred to a copy of the letter dated 23.7.1993 (annexure 6) issued by the Joint Secretary to the University's Grant Commission. We have carefully perused the said letter. In the said letter there is nothing to suggest that for appointment of lecturers, Honours at the degree level is a 'must'. The contents of the said letter would show that the concerned authorities have been given liberty to appoint substitutes on payment of honorarium in the event of immediate non-availability of teachers following transfer, deputation etc. by way of alternate arrangement. At the bottom of the said letter it has been extracted as follows:

"Ref. No.1029/R-94

Dated the 12<sup>th</sup> March, 1994

Read 18.3.94.

Copy forwarded for information and necessary action to the Principal/ Lecturer-in-Charge of all affiliated Colleges.

Please ensure that -

- (1) the candidates who apply for the part-time appointment/engagement have obtained at least 55% marks at the Master's level with a Honours degree;
- (2) the Selection Committee consists of -

.....

Sd/-

( Dr. T.K. Chatterjee )"

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The above quoted portion is not part of the letter dated 23.7.1993 written by the Joint Secretary of the UGC. It is a

copy of the letter forwarded by one Dr. T.K. Chatterjee to the Principal/Lecturer-in-Charge of all affiliated colleges. The said Dr. T.K. Chatterjee is none other than the Registrar of the University of North Bengal who had written annexure 5. Therefore what has been stated therein is nothing but the stand of the University of North Bengal that Honours at degree level is a 'must'. For reasons already stated, no exception can therefore be taken in prescribing Honours at degree level as a 'desirable' qualification.

**6.** Shri Moulik submitted the PSC is not competent to issue the addendum relaxing the upper age limit. This submission is based on mis-conception of facts. It is the case of the state government that because of long delay in the regular recruitment of lecturers, many posts of lecturers in government colleges remained vacant and a number of lecturers who were otherwise qualified and fulfilled the required criteria had to continue in service on ad-hoc basis. Therefore in public interest the government decided to relax the upper age limit keeping in view the plight of those lecturers. Pursuant to this government decision, notification dated 30.4.2002 (annexure 5) was issued by the Governor. The addendum issued by the PSC was based on decision of the state government. It was published in the Sikkim Herald dated 10.5.2002 for general information to enable candidates to apply who had not done earlier. Since the relaxation of

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age has been made in public interest we do not find any illegality therein. Therefore the allegation that the relaxation of upper age was done with a view to accommodate respondents no. 4 and 5 is without any basis.

**7.** The claim of the petitioner that he being a 'local person', he ought to have been preferred to respondents no. 4 and 5 has also no legal basis. If both are equal, the petitioner may get preferential treatment on the ground that he is a 'local person'. But if he is unequal to his contestant the question of giving him preference does not arise. As it would be discussed later, his position in the merit list is far below that of respondents no. 4 and 5. Therefore his claim that he should have been preferred to respondents no. 4 and 5 cannot be accepted.

**8.** Shri Moulik next contended that the selection committee erred in deciding the fate of candidates by merely holding an interview. His submission is that selection basing on only viva-voce test is arbitrary. In this connection, he placed reliance on the judgment of the Supreme Court in Praveen Singh vs. State of Punjab AIR 2001 SC 152.

It may be mentioned here that under the Recruitment Rules no provision has been made as to the method of selection to the post of lecturer by way of direct recruitment. The rules are totally silent in this matter. In absence of any specific rule or instructions in this regard selection made by

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an expert body like the Public Service Commission solely on the basis of interview/viva-voce cannot be held to be illegal. The Supreme Court in Lila Dhar vs. State of Rajasthan AIR 1981 SC 1777 has held as follows :

“6. .... In the case of admission to a college, for instance, where the candidate’s personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in Periakaruppan v. State of Tamil Nadu, Ajay Hasia v. Khalid Mujib Sehravardi, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be give, though not much too great a weight, to the interview-test.” [emphasis supplied]

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9. The above ratio has been followed by the Supreme Court in Anzar Ahmed vs. State of Bihar AIR 1994 SC 141 and Kiran Gupta vs. State of U.P. (2000) 7 SCC 719.

The case of Praveen Singh (supra) referred to by Shri Moulik is distinguishable on facts. Under the relevant recruitment rules of Punjab to the post of Block Development and Panchayat Officer marks obtained in the written examination are to be added with the marks awarded in the viva-voce test and merit list was to be drawn but the Punjab Public Service Commission instead of taking the sum total of marks called candidates to viva-voce test fixing 45% marks in the written test as qualifying marks and called those candidates for the viva-voce test who had obtained the aforesaid qualifying marks. In the context of those facts the Supreme Court held since the ultimate selection was made on the sole basis of the viva-voce test, the entire selection is vitiated. The ratio laid down in Praveen Singh (supra) cannot be made applicable to the present case. In view of what has been stated above, the selection of respondents no. 4 and 5 cannot be invalidated merely because the selection was based on the viva-voce test.

**10.** It was further alleged that in the selection committee no expert in the subject concerned was included. In order to verify the aforesaid, we called for the relevant records from the PSC. The records have been made available to us by the learned Advocate-General. From the letter no. SPSC/2(57)/95/CON/31 dated 26.5.2003 addressed to the Secretary of the Education Department we find that the

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selection committee was in fact assisted by subject experts for interviewing the candidates. In view of this, we have no hesitation to reject the above allegation.

**11.** It was also contended that the selection committee did not follow any principle or guidelines for selecting the candidates. On perusal of the records we find altogether 13 candidates were interviewed by the selection committee for the posts of lecturers in Nepali. In the merit list the position of the petitioner was at serial no. 7 whereas respondents no. 5 and 4 respectfully featured at serial nos. 1 and 3. One Geeta Niroula's position in the merit list was at serial no.2. In adjudging the suitability of a candidate for the post, the expert body like the Public Service Commission, in absence of any prescribed criteria under a statute or rule has the discretion of evolving its mode of evaluation of merit and selection of the candidate. In the present case, the selection committee has divided total 100 marks and allotted as follows:-

Sl. No.	Name of the candidate	Personality	General Knowledge	Professional Aptitude	Experience	Qualification	Total
1.	Parsuram Poudyal (respondent no.5)	13.2	13.8	17	12	12	68
2.	Geeta Niroula	13	13.4	18	13	10	67.4
3.	Dasrath Kharel (respondent no.4)	13	13.2	17	14	9	66.2
4.	Balram Pandey	.....	.....	.....	.....	.....	.....
5.	Abhi Dhan Rai	.....	.....	.....	.....	.....	.....
6.	Shiva Kumar Nepal	.....	.....	.....	.....	.....	.....
7.	Padam Bahadur Chettri (petitioner)	10.7	11.3	11	02	11	46

From the above, we do not discern any wrong or illegality in the mode of selection. The position of the petitioner in the merit list being far below that of respondents no. 4 and 5, no valid grievance can be raised for his non-selection.

**12.** Shri Moulik lastly contended that Puspa Sharma, one of the members of the selection committee had bias against the petitioner. He submitted that the petitioner has no good relation with her who was the head of the department of Nepali Language in Tadong College. This contention has to be stated to be rejected. The said Puspa Sharma has not been arrayed as a party in the case. In her absence it is not possible for this Court to consider and deal with allegation of bias. The allegation against her is otherwise vague and is not supported by any material particulars. The petitioner did not object to her inclusion or presence in the selection committee. His objection came only after the selection was over and when he was not selected. This amounts to waiver of objection on the part of the petitioner. The Supreme Court in *G. Sarana (Dr) v. University of Lucknow* AIR 1976 SC 2428 has held that if a person knowingly all the relevant facts voluntarily appeared before the committee and took a chance of having a favourable recommendation from it and having done so it is not open for him to turn around and question the constitution of the committee on the ground of bias. [See

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also U.D. Lama v. State of Sikkim (1997) 1 SCC 111, Utkal University v. Dr. Nrusingha Charan Sarangi (1999) 2 SCC 193]. The petitioner appeared before the selection committee and when he found that the result did not go in his favour he turned around and questioned the validity of the constitution of the committee on the ground of bias by one of its members. It is a clear case of waiver on his part and we have no hesitation to reject the contention of Shri Moulik in this regard.

**13.** All the contentions raised on behalf of the petitioner have failed. There is no merit in the writ petition, which is hereby dismissed. No orders as to costs.

  
**( R. K. Patra )**  
**Chief Justice**  
 21.05.2004

I agree.

  
**( N. Surjamani Singh )**  
**Judge**  
 21.05.2004

Dictation taken  
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 Tshering Dolkar