

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

DATED: 25.05.2018

S.B.: HON'BLE THE CHIEF JUSTICE

WP(C) No. 41 OF 2016

1. Ms. Sajna Rai,
D/o Shri B. B. Rai,
R/o Dodak Busty, West Sikkim.
2. Shri Namsang Subba,
S/o Shri C. L. Subba,
R/o Pelling, West Sikkim.
3. Ms. Aaishma Gurung,
D/o Smt. Sova Gurung,
R/o Dodak Busty, West Sikkim.
4. Shri Vivek Bishwaraj Gurung,
S/o Shri H. P. Gurung,
R/o Yangtang, West Sikkim.
5. Shri Mabin Chhetri,
S/o Shri Udai Chardra Chhetri,
R/o Thingling, West Sikkim.
6. Ms. Tshering Choden Bhutia,
D/o Thamtu Bhutia,
R/o Lingtam Rongli, EastSikkim.
7. Ms. Tamanna Katwal Chettri,
D/o Late D. K. Katwal,
R/o Gyalzing, West Sikkim.
8. Ms. Nikkita Gurung,
D/o Shri Til Bahadur Gurung,
R/o Buriakhop, West Sikkim.
9. Shri Justin Palzor Bhutia,
S/o Shri D. Bhutia,
R/o Sribadam, West Sikkim.

WP(C) No. 41 of 2016
Ms. Sajna Rai & Ors. vs. State of Sikkim & Ors.
and
WP(C) No. 36 of 2017
Ashish Subba & Ors. vs. State of Sikkim & Ors.

10. Shri Sudip Tamnag,
S/o Shri K. Tamang,
R/o Soreng Jumbadara, West Sikkim.
11. Shri Madhu Sudan (Sharma) Khatiwara,
S/o Shri Hari Bhakta Sharma (Khatiwara),
R/o Lower Aho, Yangtam, East Sikkim.
12. Shri Abhishek Pradhan,
S/o Shri S. K. Pradhan,
R/o Dalapchand, East Sikkim.
13. Ms. Yangchen Ongmu Bhutia,
D/o Shri Phur Tshering Bhutia,
R/o Pelling, West Sikkim.
14. Shri Pranai Sharma,
S/o Shri B. Prasad Sharma,
R/o Lossing Pakyong, East Sikkim.
15. Shri Sujeet Gurung,
S/o Shri K. B. Gurung,
R/o Sardong, West Sikkim.

... Petitioner (s)

-VERSUS-

1. The State of Sikkim,
Through the Chief Secretary,
Government of Sikkim, Gangtok.
2. The Secretary,
Sikkim Public Service Commission,
Government of Sikkim,
Gangtok.
3. The Secretary,
Roads & Bridges Department,
Government of Sikkim, Gangtok.

... Respondent(s)

Appearance:

Mr. Karma Sonam Lhendup and Ms. Tashi Doma Sherpa,
Advocates for the Petitioner.

Mr. Karma Thinlay, Sr. Govt. Advocate with Mr. Thinlay Dorjee Bhutia, Govt. Advocate, Mr. S.K. Chettri, Govt. Advocate for Respondents No. 1 and 2.

Mr. Bhusan Nepal, Advocate for Respondent No. 3.

A N D

WP(C) No.36 OF 2016

1. Ashish Subba,
Son of Lall Bdr. Subba,
Resident of Dentam Bazar,
West Sikkim.
2. Suman Pradhan,
Son of Lt. Surja Pradhan,
Resident of Hee Bazar, West Sikkim.
3. Passang Sherpa,
Son of Dukpa Sherpa,
Resident of 2nd Mile, Upper Chandmari,
J.N Road, East Sikkim.
4. Prakash Tamang,
Son of Lt. C.B Tamang,
Resident of Near District Court,
Upper Sichey, East Sikkim.
5. Atul Subba,
Son of Lt. J.L Subba,
Resident of Bermiok Bazaar,
West Sikkim.
6. Tenzing Dorjee Bhutia,
Son of Nim Dorjee Bhutia,
Resident of Lower Chandmari,
J.N Road, East Sikkim.
7. Passang Tshering Bhutia,
Son of Lt. Dorjee Bhutia,
Resident of Lower Tadong,
East Sikkim.
8. Rinzing Namgyal Bhutia,
Son of Passang Tshering Bhutia,
Resident of Kyongsa,
Near Power Colony, Gyalshing,
West Sikkim.

9. Sajal Chettri,
Son of Dak Man Chettri,
Resident of Namphing,
South Sikkim.
10. Bikash Pradhan,
Son of Lt. Narendra Pradhan,
Resident of Ranipool Bazaar,
East Sikkim.
11. Usha Kiran Pradhan,
Daughter of Tulsi Pradhan,
Resident of Tibet Road,
Gangtok, East Sikkim.
12. Chang Chup Dolma Bhutia,
Daughter of Lt. Tenzing Bhutia,
Resident of Sundargaon, Tadong,
East Sikkim.
13. Phur Tshering Sherpa,
Son of Dawa Tshering Sherpa,
Resident of Upper Thambong,
Sombaria, West Sikkim.
14. Jimila Bhutia,
Daughter of Lobzang Bhutia,
Resident of Hospital Road,
Rabongla, South Sikkim.
15. Shamsa Pakimoo (Lepcha),
Son of Lhagay Lepcha,
Resident of Above DAC Road, Pentok
Mangan Bazaar, North Sikkim.
16. Chomu Bhutia,
Daughter of P.T. Bhutia,
Resident of Rongli,
East Sikkim.
17. Nikash Pradhan,
Son of Manoj Kumar Pradhan,
Resident of Rhenock Pacheykhani,
East Sikkim.
18. Anand Nepal,
Son of S.K Sharma,
Resident of Dickling Pacheykhani,
East Sikkim.

19. Chetan Gurung,
Son of K.B Gurung,
Resident of College Valley, Tadong,
East Sikkim.
20. Dawaden Bhutia,
Son of Adup Bhutia,
Resident of Samlik Marchak,
Ranipool, East Sikkim.
21. Thupden Palzang Bhutia,
Son of Lt. Karma Choden Bhutia,
Resident of Yangsum,
West Sikkim.
22. Layzang Bhutia,
Son of Palden Tshering Bhutia,
Resident of Dokham Building,
Namchi, South Sikkim.
23. Sangay Ongda Bhutia,
Son of Mingma Bhutia,
Resident of Chandmari,
Bhusuk Road,
Gangtok, East Sikkim.
24. Meena Gurung,
Daughter of Krishna Bahadur Gurung,
Resident of Phamtam Ravangla,
South Sikkim.
25. Pranisha Ruchal,
Daughter of Lt. Garjaman Ruchal,
Resident of Upper Sichey,
Co-Operative Road,
Gangtok, East Sikkim.
26. Tshering Choden Bhutia,
Daughter of Chultim Bhutia,
Resident of Sinek Bazaar,
Lasso Tashiding, West Sikkim.
27. Crosby Bhutia,
Son of P.T Bhutia,
Resident of Pelling,
West Sikkim.
28. Yogesh Subba,
Son of Dhan Bahadur Subba,
Resident of Lower Thambong,
Sombaria, West Sikkim.

29. Neeka Tamang,
Daughter of Dilip Tamang,
Resident of Pipalay, West Sikkim.
30. Deepa Kapil,
Daughter of N.B Kapil,
Resident of College Valley,
Tadong, East Sikkim.
31. Anurag Pradhan,
Son of Narayan Pradhan,
Resident of Namchi Bazar,
South Sikkim.
32. Manjana Gurung,
Daughter of Lt. Bishnu Prasad Gurung,
Resident of Dentam Bazar,
West Sikkim.
33. Anita Pradhan,
Daughter of Atma Prakash Pradhan,
Resident of Sinek Tashiding Bazar,
West Sikkim.
34. Sherab Gyatso Bhutia,
Son of P.T. Bhutia,
Resident of Chandmari,
Bhusuk Road,
Gangtok, East Sikkim.
35. Bishnu Tamang,
Son of B.B. Tamang,
Resident of Upper Arithang,
Gangtok, East Sikkim.
36. Narendra Kumar Pradhan,
Son of H.B Pradhan,
Resident of Maskey Bhawan,
Sisa Golai, Gangtok,
East Sikkim.
37. Yankee Lamu Bhutia,
Daughter of Gyalpo Bhutia,
Resident of Near D.G Bunglow,
Tathangchen, Raj Bhawan.
38. Bipin Lama,
Son of Lt. Dr. Biren Lama,
Resident of Yonzon Niwas,
Below Palzor Stadium,
Gangtok, East Sikkim.

39. Sonam Thendup Bhutia,
Son of Karma Pintso Chopel Bhutia,
Resident of Upper Tathangchen,
East Sikkim.
40. Rupesh Basnett,
Son of Lt. Chandra Bahadur Basnett,
Resident of Mallbasey Busty,
Soreng, West Sikkim.
41. Arpan Dhakal,
Son of Muktinath Dhakal,
Resident of Assam Linzey,
Daragaon, East Sikkim.
42. Himalaya Gautam,
Son of S.K Gautam,
Resident of Bahai School Road,
Tadong, East Sikkim.
43. Rukmani Pradhan,
Daughter of C.K Pradhan,
Resident of Daragaon,
Upper Tadong, East Sikkim.
44. Chodenla Bhutia,
Daughter of P.C Bhutia,
Resident of Kingstone,
Near Govt. Sec. School,
Rhenock, East Sikkim.
45. Rosan Gurung,
Son of Mohan Gurung,
Resident of Bhutia Busty,
Namchi, South Sikkim.
46. Neelam Chettri,
Daughter of Lt. B.B Chettri,
Resident of Pakyong-Namcheybong,
East Sikkim.
47. Sangam Rai,
Son of Lt. S.R Rai,
Resident of Chumbong, Via
Nayabazar, Soreng
West Sikkim.
48. Dikshi Tamang,
Daughter of Lt. Prakash Tamang,
Resident of Soreng, West Sikkim.

WP(C) No. 41 of 2016
Ms. Sajna Rai & Ors. vs. State of Sikkim & Ors.
and
WP(C) No. 36 of 2017
Ashish Subba & Ors. vs. State of Sikkim & Ors.

49. Suren Subba,
Son of M.B Subba,
Resident of Singling – Soreng,
West Sikkim.
50. Sonam Lendup Lachungpa,
Son of Chunda Tsarchen Lachungpa,
Resident of Lachung - Fhaka,
North Sikkim.
51. Passang Chopel Lepcha,
Son of Marching Lepcha,
Resident of Upper Rakdong,
East Sikkim.
52. Sonam Palzor Laripa,
Son of Chungtuk Bhutia,
Resident of Sang Phegyong,
East Sikkim.
53. Shan Hang Subba,
Son of Dhan Raj Subba,
Resident of Sombaria Bazar,
West Sikkim.
54. Allen Basnett,
Son of Nanda Lall Basnett,
Resident of Upper Radhu,
Gyalsing,
West Sikkim.

... Petitioner (s)

-VERSUS-

1. State of Sikkim
represented through
the Chief Secretary,
Government of Sikkim,
P.O Gangtok,
East Sikkim.
2. The Secretary,
Roads & Bridges Department
Government of Sikkim,
P.O Gangtok,
East Sikkim.
3. The Commissioner cum Secretary,
Department of Personnel,

Administrative Reforms and Training,
Government of Sikkim,
P.O Gangtok, East Sikkim.

4. Sikkim Public Service Commission,
Represented by and through its Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

... Respondent(s)

Appearance:

Mr. A. Moulik, Sr. Advocate with Ms. K.D. Bhutia, Mr. Ranjit Prasad and Ms. Archana Sharma, Advocates for the Petitioner.

Mr. Karma Thinlay, Sr. Govt. Advocate with Mr. Thinlay Dorjee Bhutia, Govt. Advocate, Mr. S.K. Chettri, Govt. Advocate for Respondents No. 1, 2 and 3.

Mr. Bhusan Nepal, Advocate for Respondent No. 4.

ORDER (ORAL)

Satish K. Agnihotri, CJ

Impugning Notice No.152/SPSC/EXAM/2016 dated 17.08.2016, the Petitioners who are stated to be the freshers have come up with this Petition being WP(C) Bo. 41 of 2016 questioning the legality of the Notice on the ground that the Notice confines to only those candidates who are working as Junior Engineers (Civil) on temporary employees as *ad hoc* and contract basis under various Departments of the Government of Sikkim. Subsequently, an Advertisement No.14/SPSC/2016 dated 29.08.2016 inviting applications from freshers for the posts of Junior Engineers (Civil) was

also placed under challenge. The principal contention of the Petitioners in WP(C) No. 41 of 2016 is that the other freshers who have passed out from the Universities are denied right to consideration against the existing vacancies.

2. The Petitioners in WP(C) No. 36 of 2016 are stated to be working as *ad hoc* Junior Engineers (Civil) after due selection process have filed the petition questioning the legality of the notice dated 17.08.2016, wherein all the ad hoc/contract employees, irrespective of their period of working, are treated at par and permitted to make application for appointment on regular basis on the post of Junior Engineer (Civil). The contention of Mr. Moulik, learned Senior Counsel is that the temporary/contract employees appointed recently cannot be treated at par with the petitioners, who have been working for more than 5 (five) years, thus, it is discriminatory.

3. During currency of these Petitions, Mr. Karma Thinlay, Senior Government Advocate, producing a copy of the communication dated 24.05.2018, submits that the State Government has decided to withdraw the impugned Notice No.152/SPSC/EXAM/2016 dated 17.08.2016 as well as Advertisement No.14/SPSC/2016 dated 29.08.2016.

4. Thus, nothing survives for adjudication in the matter.

5. Mr. A. Moulik, Learned Senior Counsel, would further submit that if the Petitioners are not satisfied with the new proposed

Notification, the Petitioners may be granted liberty to approach this Court.

6. Needless to state that issuance of fresh Notification may create a new cause of action, for that no liberty is required.

7. On the issue as to whether the instant petitions, on account of withdrawal of the impugned notifications, have become infructuous, all the parties are in agreement.

8. In such view of the matter, nothing survives for adjudication.

9. Thus, WP(C) No. 41 of 2016 (Ms. Sajna Rai & Ors. vs. State of Sikkim & Ors.) and WP(C) No. 36 of 2016 (Ashish Subba & Ors. vs. State of Sikkim & Ors.) are disposed of.

10. Communication dated 24.05.2018 is taken on record.

Chief Justice
25.05.2018

Index : ~~Yes~~ / No
jk/ds Internet : Yes / ~~No~~