

# IN THE HIGH COURT OF SIKKIM

## CIVIL JURISDICTION

WP (C) No. 44 of 2011

PEMBA LEPCHA

~~Appellants (s)~~  
Petitioner (s)

Versus

STATE OF SIKKIM & ORS.

Respondent (s)  
~~Opposite party (s)~~

Appellant

For \_\_\_\_\_ MR. JORGAY NAMKA AND MS. ZOLA MEGI  
Petitioner  
(Advocate (s))

Respondent

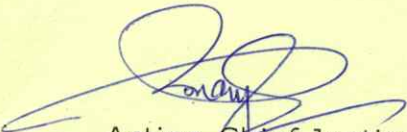
For \_\_\_\_\_ MR. J.B. PRADHAN, ADDL. ADVOCATE GENERAL WITH  
~~Opposite Party~~ MR. KARMA THINLAY, GOVT. ADVOCATE AND  
(Advocate (s)) MR. S.K. CHETTRI, ASSTT. GOVT. ADVOCATE

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01.	31.10.11	<p>Present: Mr. Jorgay Namka and Ms. Zola Megi, Advocates for the petitioner.</p> <p>Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. S. K. Chettri, Asstt. Govt. Advocate for the State-respondents.</p> <p>---</p> <p>The petitioner, who is a promotee Assistant Engineer, has approached this Court with the present writ petition as he is aggrieved by the Seniority List, Annexure-9, published vide Notification No. 68/GEN/DOP dated 02.02.2007, wherein he has</p>

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		<p>been placed below the respondents No. 3 to 22, who are direct recruits.</p> <p>2. It is the case of the petitioner that the respondents No. 3 to 22, being aggrieved by the very Seniority List, had filed Writ Petition No. 40 of 2009 before this Court, which was dismissed upholding the said Seniority List. Mr. Jorgay Namka, learned Advocate appearing on behalf of the petitioner, states that he is similarly situated as the respondents in that writ petition and ought to have been placed above the present respondents No. 3 to 22 (the petitioners in W.P.(C) No. 40/2009), but instead has been placed below them. As per Mr. Namka, Writ Petition No. 43 of 2010, where also the impugned Seniority List was under challenge, was disposed off by this Court vide Order dated 11.11.2010.</p> <p>3. Mr. J.B. Pradhan, learned Additional Advocate General submits that the judgment of this Court in Writ Petition No. 40 of 2009 is under challenge before the Hon'ble Supreme Court in SLP No. 26597/2010 at the instance of the present respondents No. 3 to 8 in which essentially the very question involved in the present writ petition is <i>in lis</i>, and therefore, the petitioner ought to be directed to approach the Hon'ble Supreme Court and intervene in the SLP.</p> <p>4. On the other hand, Mr. Jorgay Namka, submits that the case of the petitioner is clearly distinguishable from the ones decided by this Court in W.P.(C) Nos. 40/2009 and 43/2010 in as much as the question involved in those cases is as to whether it is Rule 4(e) or 4(f) of the Sikkim State Services</p>

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<p>Index: Yes/No Internet: Yes/No</p> <p>pm/jk</p>		<p>(Regulation of Seniority) Rules, 1980 that would be applicable in the case of the petitioners which is not the issue in the case at hand.</p> <p>5. Heard and considered the rival contentions on behalf of the parties.</p> <p>6. There does not appear to be any doubt of the fact that the essential question to be determined in the SLP referred to above is with regard to the <i>vires</i> and legality of the Seniority List, Annexure-9. However, since the petitioner is apprehensive of his interest in the controversy being adversely affected, it would be sufficient for this Court to direct the State-respondents, more particularly respondent No. 1, to dispose off his representations Annexure-10 received by the concerned on 02.08.2010, Annexure - 11 dated 16.03.2011 and Annexure - 12 dated 05.09.2011. While doing, the respondent No. 1 shall, in addition to the facts and circumstances indicated in those representations, also consider the materials placed in the present writ petition. Let the representations be heard and disposed off within a period of 30 days.</p> <p>7. With the above direction, the present writ petition stands disposed off.</p> <div style="text-align: right;">             Acting Chief Justice            31.10.2011         </div>