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IN THE HIGH COURT OF SIKKIM

Writ Petition (C) No. 66 of 2000.

Shri Prem Narayan Pradhan
Son of Shri K.M. Pradhan
Resident of Mangan, North Sikkim. ... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



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Writ Petition (C) No. 67 of 2000

Khem Bahadur Karki
Son of late K.B. Karki
Resident of Tintek Busty
5th Mile, Mandir Complex
East Sikkim. ... Petitioner

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Writ Petition (C) No. 68 of 2000

Pintso Doma Lepcha
Daughter of Naksuk Lepcha
Resident of Gangyap Busty
Namchi, South Sikkim. ... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Writ Petition (C) No. 69 of 2000

Ms. Songmit Lepcha
Daughter of Shri Kinchok Lepcha
Resident of Singhik, North Sikkim. ... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Writ Petition (C) No. 70 of 2000

Shri Ugen Paljor Lepcha
Son of Nathup Lepcha
Resident of Hee-Gyathang
Lower Dzongu, North Sikkim. ... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Writ Petition (C) No. 71 of 2000

Ms. Rekha Tamang
Wife of M.K. Gurung
Gumpa Ghurphesay
South Sikkim. ... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Writ Petition (C) No. 2 of 2001

Shri Gho Gho Bhutia
Son of Sonam Bhutia
Resident Namok
North Sikkim.

... Petitioner.

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
 2. Secretary
Department of Education
Government of Sikkim
Gangtok.
 3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
 4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
 5. Secretary
Power Department
Government of Sikkim
Gangtok.
- ... Respondents.



Writ Petition (C) No. 3 of 2001

Shri Prem Bahadur Thatal
Son of Shri K.B. Thatal
Resident of Mangshila
North Sikkim.

... Petitioner

VERSUS

1. State of Sikkim
through Chief Secretary
Government of Sikkim
Gangtok.
2. Secretary
Department of Education
Government of Sikkim
Gangtok.
3. Secretary
Department of Personnel, A.R. & Trg.
Government of Sikkim
Gangtok.
4. Principal Chief Conservator of
Forest-cum-Secretary
Forest Department
Government of Sikkim
Gangtok.
5. Secretary
Power Department
Government of Sikkim
Gangtok. ... Respondents.



Coram:
The Hon'ble Mr. Justice Anup Deb, Judge.

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

Mr. S.P. Wangdi, Advocate General with
Mr. Karma Thinlay, Assistant Government
Advocate for the respondents.

Mr. C.L. Sharma, Additional Secretary,
Department of Personnel, A.R. & Training,
Government of Sikkim in person.

Mr. T.N. Pradhan, Joint Secretary,
Education Department, Government of
Sikkim in person.

....



Date on which Judgment is reserved : 8th October 2001.

Date of Decision : 12th October 2001.

J U D G M E N T

DEB. J.

All these writ petitions are disposed of by this common judgment.

2. By filing these writ petitions, the petitioners prayed for directions for regularisation in the posts of Graduate teachers from their date of appointment on ad-hoc basis. Further prayer was made

that they are entitled be regularised to the post of teachers before appointment of fresh graduate teachers. The memorandum of appointment contains the following conditions: -

- (i) The appointment will be on ad-hoc basis for a period effective from the date of joining till December 1999.
- (ii) The appointment may be terminated during the period at any time by giving 30 days notice by either side, viz. the appointing authority or the appointee, without assigning any reason. The appointing authority, however, reserved the right of terminating the service of the appointee forthwith or before the expiry of the stipulated period of the notice.
- (iii) The appointment carries with the liability to serve in any part of Sikkim.
- (iv) Other conditions of service will be governed by the relevant rules in force from time to time.

3. The petitioners entered into agreements of appointment on diverse dates in May 1998 and June 1998 which stipulated that the Government of Sikkim was willing to appoint the petitioners as



teacher on Rs.5500-175-9000 scale of pay in the schools run by the Education Department under the control and supervision of the Director of Education. The petitioners were willing to accept the employment offered by the Director of Education, Government of Sikkim. The appointment shall be purely temporary for a period with effect from the date of joining till December 1999.

4. The petitioners were claiming regularisation of their service as Graduate Teachers (Arts) in the Department of Education, Government of Sikkim on the ground that they have served as Graduate Teacher (Arts) on ad-hoc basis for about two years. The petitioners were appointed as Graduate Teachers (Arts) on ad-hoc basis with effect from the date of joining till 31st December 1999. The terms and conditions of appointment was issued to the petitioners vide memorandum of appointment. The petitioners also entered into agreements of appointment with the Director, Education Department, Government of Sikkim on diverse dates in May 1998 and June 1998. The petitioners accepted the memorandum and after signing the agreements, the petitioners were issued formal letters of appointment. The ad-hoc services of the petitioners were terminated on 30th November 1999 instead of 31st December 1999 as the academic



session was coming to an end on 4th December 1999. Since, after 4th December 1999, the services of the petitioners were not required and considering the financial burden, the respondents terminated the services of the petitioners and other ad-hoc teachers on 30th November 1999. The recruitment of Graduate Teachers (Arts) in the Department of Education, Government of Sikkim is governed by the Education Department (Graduate and Post Graduate Teachers) Recruitment Rules, 1991. The said rules came into force with effect from 3rd December 1991. The aforesaid rules provides method of recruitment as 80 % by direct recruitment and 20 % by promotion failing which 100 % by direct recruitment. The Employment Notice published by the Director, Education Department shows that the selection of candidates will be made on the basis of written examinations through open competitive examination. Candidates who qualify in written examinations will be called for viva-voce.

5. Altogether there had been 14 vacancies of Graduate Teachers (Arts) in the Department of Education, Government of Sikkim. In order to fill up these vacancies in accordance with the Education Department (Graduate and Post Graduate Teachers) Recruitment Rules, 1991, the respondents issued an employment notice in the

Herald Classified VOL XLIV No. 33, dated 18th April 2000 (Annexure R-2). In pursuant to the aforesaid employment notice, around 869 candidates applied for the 14 posts of Graduate Teachers (Arts), which had been advertised. Out of 869 candidates who had appeared in the written examination only 73 were selected for the viva voce test. Out of the 73 candidates only 14 candidates were finally selected against the respective vacancies, which had been advertised. At present, there are no vacant post of Graduate Teachers (Arts) and there are no ad-hoc Graduate Teacher (Arts) serving in the Education Department, as all the vacant posts have been filled up in accordance with the Recruitment Rules, 1991, after publication of the employment notice. The petitioners in pursuance of the employment notice (Annexure R-2) applied and appeared in the written examination, but the petitioners did not qualify in the written examination and as such were not selected for the viva-voce test. The petitioners filed these writ petitions for regularisation of service. The petitioners have approached this Court for regularisation of service after they failed to qualify in the written test and, therefore, the petitioners have no right to claim regularisation. The writ petitions filed by the petitioners are devoid of any merit and are liable to be



dismissed. Taking these aspects into consideration, all these writ petitions were treated as Public Interest Litigation. Direction was given vide order dated 26th December 2000 that pending disposal of these writ petitions, ad-hoc appointments shall not be made for a period exceeding one year or as prescribed by the rules and where rule is silent, the ad-hoc appointment shall not be made for more than one year and advertisement shall be made in the newspapers for filling up of those posts.

6. It is well settled that the High Court must act with due care and caution while issuing directions for regularisation of services and direction by the High Court to regularise unconditionally all persons who have put in one year's service is not sustainable. It is, therefore, not proper to issue direction in respect of ad-hoc/ temporary employees working for above two years with the State Government for regularisation of service. It is also well settled that the role of the Court is to ensure rule of law and to see that executive acts fairly. The Supreme Court observed that if for any reason, an ad-hoc or temporary employee is continued for a fairly long spell, each State should frame scheme for regularisation, if one is not already invoked for regularisation of such employee, consistent with its reservation



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regularisation of ad hoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above process.



If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell – say two or three years – a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

We must also say that the orders issued by the Governments of Punjab and Haryana providing for



policy. Guiding principle regarding regularisation of service has been laid down by the Supreme Court in State of Haryana and others vs. Piara Singh and others reported in AIR 1992 SC 2130 and some of the relevant portions of the judgment are quoted below: -

“10.....
 It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate Legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad-hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation.”

“25. Before parting with this case, we think it appropriate to say a few words concerning the issue of



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regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein. ”

7. The Secretary, Department of Personnel, Administrative Reforms and Training, Government of Sikkim has issued an Office Memorandum bearing No. 1942/GEN/DOP dated 24th September 2001 indicating guidelines for ad-hoc appointment, which is extracted below: -

“ GOVERNMENT OF SIKKIM
DEPTT. OF PERSONNEL, ADM. REFORMS &
TRAINING
GANGTOK.

No: 1942/GEN/DOP-

DATED: 24-09-2001.

OFFICE MEMORANDUM

It has been observed that some departments are making ad-hoc appointments either against sanctioned





post or without any sanctioned post. Ad-hoc appointments are not covered in any recruitment rules of the State Government. It must be explained that normal rule of appointment is regular recruitment through the prescribed procedure under the recruitment rules but exigency of administration may sometimes call for an ah-hoc or temporary appointment to be made. Some departments like Education Department require teachers on an urgent basis for a particular academic session of teaching in the schools so as not disturb the academic session. At the same time in order to get quality teachers the Education Department has to also conduct regular recruitment of teachers. In order to get quality teachers it is necessary to adopt both ad-hoc appointment and regular appointment wherein ad-hoc teachers can also sit for regular recruitment of teachers through competitive examination. The scheme of reservation adopted by the State Government cannot be infringed. It has, therefore, become necessary to issue detailed guidelines as follows: -


1. Ad-hoc appointments can be made only after clearance of the Department of Finance and Department of Personnel and with the approval of the Government;
2. Ad-hoc appointment can be made only in departments which are of public utility or essential services or service which Government consider as essential or in exigency of administration;
3. Ad-hoc appointments can be made only against sanctioned posts and only on consolidated salary;
4. Ad-hoc appointments can be made only for a specified period of less than a year;
5. Ad-hoc appointments in other departments can be regularised by the Government in cases where they have been working for more than a year only after a scheme of regularisation is prepared and approved by the



Government. In such cases all the recruitment eligibility criteria is fulfilled through due process of recommendation of the Departmental Promotion Committee or Sikkim Public Service Commission, as the case may be;

6. In all cases of ad-hoc teachers of Education Department will have to go through the regular process of recruitment for final selection and appointment.

Sd/- (R.S. BASNE)
 SECRETARY TO THE GOVT. OF SIKKIM
DEPTT. OF PERSONNEL, ADM. REFORMS &
TRAINING ”



8. This Office Memorandum dated 24th September 2001 containing guidelines for ad-hoc appointments is not under challenge in the writ petitions and the Court does not express any opinion about the validity or otherwise of the aforesaid Office Memorandum. Such questions are kept open. In view of the aforesaid Office Memorandum, there is no necessity to issue further directions.

9. Writ Petitions are disposed of accordingly.

sd/L
 (ANUP DEB)
 JUDGE
 12-10-2001.

CERTIFIED TO BE TRUE COPY

[Signature]
 ASSISTANT REGISTRAR (JUDL)
 HIGH COURT OF SIKKIM
 AT GANGTOK