

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

DATED : 16.03.2012

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE PERMOD KOHLI**

Writ Petition (C) No. 09 of 2012

1. Shri Jagat Prasad Thapa,
S/o Lt. P. Thapa,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Namchi,
South Sikkim.
2. Shri Kamal Kharel,
S/o Lt. B. P. Kharel,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Deorali,
East Sikkim.
3. Shri Bimal Kafley,
S/o S. B. Kafley,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Linkey Thekabong,
South Sikkim.
4. Shri Karma Gyaltsen Bhutia,
S/o Lt. T. Bhutia,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Mangan,
North Sikkim.



5. Shri Ramesh Kr. Pradhan,
S/o B. P. Pradhan,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Jorethang,
South Sikkim.
6. Shri Rup Lall Subba,
S/o Lt. K. B. Subba,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Namcheybong-Pakyong,
East Sikkim.
7. Shri Gunja Bdr Rai,
S/o Lt. P. B. Rai,
Assistant Engineer,
Sikkim State Electrical Engineering Service
R/o Sopakha Block,
West Sikkim.

... **Petitioners.**

- versus -

1. The State of Sikkim,
Through the Secretary,
Department of Personnel, A.R. & Training,
Public Grievances, Career Option,
Employment Skill Development and Chief
Minister's Self Employment Scheme
Government of Sikkim,
Gangtok, East Sikkim.
2. The PCE-cum-Secretary,
Energy and Power Department,
Government of Sikkim,
Gangtok, East Sikkim.
3. Shri O. P. Pradhan,
Assistant Engineer (Electrical),
Maintenance-I, Head Office Gangtok,
Energy and Power Department,
Gangtok, East Sikkim.
4. Shri Ajeet Pradhan,
Assistant Engineer (Electrical),
Rongli Sub Division, East Sikkim.

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5. Shri Tashi Yousal,
Assistant Engineer (Electrical),
Maintenance Sub Division,
Gyalsing, East Sikkim.
6. Shri Sonam Tshering,
Assistant Engineer (Electrical),
Maintenance-II, Head Office Gangtok,
Energy and Power Department,
Gangtok, East Sikkim.
7. Shri Jeewan Thapa,
Assistant Engineer (Electrical),
Soreng Sub Division,
West Sikkim.
8. Shri Bhanu Bhakta Sharma,
Assistant Engineer (Electrical),
Topa Sub Division,
East Sikkim.
9. Smt. Mingma Sherpa,
Assistant Engineer (Electrical),
Commercial Sub Division-II,
Gangtok, East Sikkim.
10. Smt. Purnima Chhetri,
Assistant Engineer (Electrical),
Commercial Sub Division-III,
Gangtok, East Sikkim.
11. Shri Karma Z. Dadul,
Assistant Engineer (Electrical),
North Sub Division,
Mangan, North Sikkim.
12. Shri Jigdol Denzongpa,
Assistant Engineer (Electrical),
Health & Family Welfare Department,
Government of Sikkim,
Gangtok, East Sikkim.
13. Shri Dhendup Dorjee Lama,
Assistant Engineer (Electrical),
Maintenance Sub Division-III,
Gangtok, East Sikkim.

14. Shri Karchung Bhutia,
Assistant Engineer (Electrical),
Sombaria Sub Division,
Jorthang, West Sikkim.
15. Shri Suraj Chandra Pradhan,
Assistant Engineer (Electrical),
Ravongla Sub Division,
South Sikkim.
16. Shri Bhim Bdr. Thapa,
Assistant Engineer (Electrical),
Maintenance Sub Division,
Gangtok, East Sikkim.
17. Shri Prakash Chandra Subba,
Assistant Engineer (Electrical),
Maintenance Sub Division,
Gangtok, East Sikkim.
18. Shri Binod Kumar Sharma,
Assistant Engineer (Electrical),
Rongli Sub Division,
East Sikkim.
19. Shri Krishna Kumar Pradhan,
Assistant Engineer (Electrical),
Commercial Sub Division,
Gangtok, East Sikkim.
20. Shri Binoy Sharma,
Assistant Engineer (Electrical),
LLHP Sub Division,
Ranipool, East Sikkim.
21. Miss K. S. C. Tongden Lepcha,
Assistant Engineer (Electrical),
Commercial Sub Division,
Gyalsing, West Sikkim.
22. Shri Arvind Rai,
Assistant Engineer (Electrical),
Maintenance Sub Division-IV,
Gangtok, East Sikkim.

... **Respondents.**

For Petitioners : Mr. Jorgay Namka, Ms. Zola Megi
and Mr. Karma Dechen,
Advocates.

For Respondents : Mr. J. B. Pradhan, Addl. Advocate
General with Mr. Karma Thinlay
Namgyal, Govt. Advocate and Mr.
S. K. Chettri, Asstt. Govt.
Advocate.

J U D G M E N T (O R A L)

Kohli, CJ

Petitioners herein are promotees having been promoted to the posts of Assistant Engineers in accordance with rule 7(1)(b) of the Sikkim State Engineering (Civil, Electrical & Mechanical) Services Rules, 1989 (in short, the Rules). They belong to the electrical service. They were initially appointed as Junior Engineers and after having completed more than 10 years of service, they became eligible for promotion to the post of Assistant Engineer in accordance with the rule 7(1)(b) of the Rules.

2. It is admitted case of the petitioners that they were interviewed on February 23, 2004, however, their order of promotion as Assistant Engineers came to be passed on 26.05.2004 (Annexure-P8). As far as the private respondents are concerned, they were initially engaged by the respondent-

State as Assistant Engineers on work charge basis. They continued to serve in that capacity for a number of years. As many as 14 posts of Assistant Engineers were referred to the Sikkim Public Service Commission for advertisement and subsequent selection. However, in the meantime, the State Government thought it appropriate to regularize the private respondents who were 20 in number. Consequently, an order dated 02.01.2004 (Annexure-P9) was passed for regularisation of the private respondents in relaxation of Rule 30 of the Rules. On their regularization the Sikkim Public Service Commission was approached for its opinion in respect to the eligibility and suitability of the private respondents vide letter dated 07.01.2004 (Annexure-P10). Vide a separate corrigendum the 14 vacancies available for direct recruitment were revised to 20. The Sikkim Public Service Commission was also approached not to initiate the process for advertisement of the referred vacancies in view of the decision of the Government to regularize the work charge Assistant Engineers. On the recommendation of the Sikkim Public Service Commission, the State Government vide its order dated 20.02.2004 appointed the private respondents as Assistant Engineers on substantive basis. The State Government vide notification dated 02.02.2007 published in the Government Gazette on 16.02.2007 issued the seniority list of the Assistant Engineers of the Sikkim State Electrical

Engineering Service. The private respondents were placed above the petitioners en-block from Sl. Nos.28 to 47, whereas the petitioners were placed en-block from Sl. Nos.49 to 55.

3. The petitioners are aggrieved of the above seniority list and after making some representations (Annexure-P14 and P15) have approached this Court challenging the seniority list (Annexure P-13) in the present petition.

4. The sole contention of the petitioners is that the private respondents having not been appointed by any process of advertisement and having been only regularized and appointed in the same financial year, they should be relegated lower than the petitioners who earned their promotions/appointments as Assistant Engineers on the basis of their merits and length of service. It is, accordingly, contended that in view of the fact that both the petitioners and the private respondents were appointed as Assistant Engineers in the same financial year, the petitioners should have the benefit of seniority over and above the private respondents.

5. The appointment of the petitioners as also the private respondents is governed by the Sikkim State Engineering (Civil, Electrical and Mechanical) Service Rules, 1989. Rule 7 deals with the appointment to the services

constituted under the rules, which is reproduced as hereunder:-

7. Method of Recruitment.-

(1) Subject to rule 6, recruitment to the Service after the appointed day, shall be by the following methods, namely,-

(a) By direct recruitment through a competitive examination and/or selection by interview to be held by the Commission.

(b) By promotion through limited departmental Competitive Examination to be held by Commission from among persons holding the post of Junior Engineer or any other post or posts declared equivalent thereto by the Government.

(2) The proportion of vacancies to be filled in any year in accordance with clauses (a) and (b) of sub-rule 1 shall be $66 \frac{2}{3} : 33 \frac{1}{3}$ respectively subject to review as the Government may deem fit:

Provided that the number of persons recruited under clause (b) of sub-rule 1 shall not at any time exceed $22 \frac{1}{3}$ per cent of the total strength of the Service."

6. Rule 7(1)(a) deal with the appointment by direct recruitment whereas the Rule 7(1)(b) deals with the appointment by promotion. These are the only recognized modes for appointment to the Services. Initially, the quota fixed for direct recruitment and promotion was $66 \frac{2}{3}$ and $33 \frac{1}{3}$ respectively. However, subsequently, the Government in exercise of the power under Rule 7(2) itself changed the quota to 50:50 for direct recruitment and for promotion respectively, which position is in existence till date.

7. It is not the case of the petitioners that the private respondents' appointment is in excess of the prescribed quota.

The seniority in the cadre of services is governed and regulated by separate Rules known as the Sikkim State Services (Regulation of Seniority) Rules, 1980. Rule 4 deals with the seniority of the members of services. The relevant extract of Rule 4 is noticed hereunder: -

"4.

Provided that where persons promoted initially on a temporary basis are subsequently appointed to the service on a substantive basis in an order different from the order of merit indicated at the time of their temporary promotion, seniority shall follow the order of subsequent appointment and not the original order of merit;

(e) the relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees and shall be determined by the dates of their substantive appointment to the Service.

....."

8. From the bare perusal of the Rule of seniority amongst the direct recruits and promotees, it is evident that the date of substantive appointment to a cadre of service is a determinative factor for fixation of seniority, thereafter the rule of rotation of vacancies is applicable. The spirit of the rule clearly indicates that the date of substantive appointment is to be taken as the date of commencement of length of service for seniority and thereafter, the rotation of vacancies for the purpose of preparing seniority roster. Thus, if there is any en-block appointment from one source, the same shall be taken into consideration for fixation of seniority and then subsequent appointment from other source. Thereafter, the

rotation is to be applied again on the basis of the substantive appointment from each source. These Rules do not envisage the appointment in any financial year as contended by the learned counsel for the petitioners. Even if the contention of the learned counsel for the petitioners is accepted, the Rule does not give any benefit to the petitioners. It is admitted case of the petitioners that their date of substantive appointment is 26.05.2004, whereas the date of substantive appointment of the private respondents is 20.02.2004. At this stage the learned counsel for the petitioners submits that the petitioners were interviewed on 23.02.2004 though due to procedural wrangles on the part of the State Government, their appointment took place only on 26.05.2004. His contention is that the date of interview or when the vacancies were available should be taken as the date of substantive appointment. I am unable to accept this contention as it is fallacious in nature and deserves outright rejection for two reasons. Firstly, it is the petitioners own case that though they having completed 10 years of service as Junior Engineers, became eligible for promotion to the post of Assistant Engineers, however, on account of non-availability of the vacancies belonging to the promotional quota, they could not be promoted as Assistant Engineers. Secondly, even if 25.02.2004, when they were interviewed, is considered to be the date of their appointment by stretching the rules in their

favour, though impermissible in law, the appointment of the private respondents took place on 20.2.2004 and thus on that ground also the claim of the petitioners fails.

9. Apart from the above, it is settled principle of law that the settled seniority cannot be tampered with by the Court, beyond a reasonable period, even if it is found that the seniority was wrongly fixed at any given date.

10. In **K. R. Mudgal & ors. v. R. P. Singh & ors. : (1986) 4 SCC 531**, Hon'ble Supreme Court while considering the question of challenge to the seniority after reasonable period, observed as under: -

"7.
 Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties.
"

11. The principle laid down in *K.R. Mudgal (supra)* by Hon'ble Supreme Court was reiterated in **Shiba Shankar Mohapatra & ors. v. State of Orissa and ors. : (2010) 12 SCC 471** with the following observations: -

"30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should

not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

12. It is also pertinent to note that the private respondents' appointment was made on 20.02.2004 by regularization in relaxation of rules. The petitioners never challenged their appointment in any manner till date, i.e. 8 (eight) years now. Even the notification fixing seniority was issued and published on 16.02.2007, the petitioners have chosen to remain silent and approached this Court after a lapse of more than 4 (four) years. The respondents having enjoyed their seniority position as regular Assistant Engineers for the last eight years cannot be disturbed by any stretch of imagination at this belated stage.

13. This petition, thus, merits rejection and is dismissed *in limine*. No costs.


(Permod Kohli)
Chief Justice
 16.03.2012

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Approved for Reporting: Yes/No
Internet: Yes/No