

HIGH COURT OF SIKKIM

Record of Proceedings**W.P.(C) No. 48 of 2018**

UPENDRA NATH DUBEY

PETITIONER

VERSUS

STATE OF SIKKIM AND ORS.

RESPONDENTS

Date: 30.05.2022

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Petitioner

Petitioner in person.

For Respondents

Mr. Sudesh Joshi, Additional Advocate General.
Mr. Yadev Sharma, Government Advocate.
Mr. Sujan Sunwar, Assistant Government Advocate.

O R D E R

I.A. No.7 of 2019 is an application filed by the Petitioner under Section 340 of the Code of Criminal Procedure, 1973 submitting that the Respondents have committed Criminal Contempt and Perjury. According to the Petitioner, the Perjury has been committed for the reason *inter alia* that the Respondents deliberately did not file Counter-Affidavit despite three to four opportunities given by this Court and consistently sought adjournments on several flimsy grounds although they had retrieved the Personal File of the Petitioner from the Pension Section of the Finance Department, Government of Sikkim to enable them to file Counter-Affidavit. That as the Respondents are guilty of committing the offences *supra* criminal proceedings be initiated against them. The Petition is supported by an Affidavit and documents being Annexure A1 to Annexure A7.

Per contra, the Learned Additional Advocate General for the State-Respondents submitted that in order to file the Counter-Affidavit to the petition, the Personal File of the Petitioner was indeed retrieved from the Pension Section, however, on examination of said File it was found that all correspondence papers were maintained haphazardly and several pages were missing with 362 cps only in place, authenticating only the latter part of the Petitioner's service, resulting in difficulty in preparing the response. The Respondents accordingly sought extension of time which was

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not wilful or *mala fide* but it was merely to enable the Respondents to prepare an effective response and hence the petition be dismissed.

I have considered the rival submissions of the Petitioner and Learned Additional Advocate General and I am constrained to opine that the State-Respondents by seeking adjournment on *bona fide* grounds does not tantamount to the offence either of Perjury or of Criminal Contempt, if this be so then every party seeking an adjournment in every case would be foisted with the incongruous situation of cases on Perjury or Criminal Contempt against them. Petition deserves to be and is accordingly dismissed.

I.A. No.7 of 2019 stands disposed of.

The matter was fixed for hearing today, however, before the hearing could commence Registry has pointed out that at Paragraph 41 of the Counter-Affidavit filed on behalf of the Respondents No.1, 2 and 3, at Page 317, it is recorded as follows;

"41. That the statements contained in paragraphs 10, 11 & 12 of the writ petition (sic), I refer and rely upon the paragraphs 14 to 17 of this counter affidavit."

That, to the contrary, at Page 310, the Paragraphs are numbered as "12, 19, 20 and 21". Paragraphs 13 to 18 are missing in the numbering of the Paragraphs.

In this view of the matter, Learned Additional Advocate General concedes that an error has crept in the numbering of the Paragraphs and seeks some time to rectify the defects.

Petitioner prays that short date be allowed for such rectification. Let Learned Additional Advocate General take steps for rectification by 10-06-2022, rectified Rejoinder if any be filed by 17-06-2022.

List on 21-06-2022 for hearing.

Judge
30.05.2022