

IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION

W. P. (C) No.

54

OF 2015

1. Dr. Sandhya Rai,
D/o Lalit Kumar Rai,
R/o Upper Burtuk Gangtok,
East Sikkim.
2. Dr. Prasana Rai,
D/o Lt. B. B. Rai,
R/o Singtam, East Sikkim.
3. Dr. Akithla Nadikpa,
W/o Sonam Palden Bhutia,
Below Modern Sec. School,
D.G.P Bungalow Road,
Upper Tathangchen, Gantok.
4. Dr. Sunita Thapa,
D/o Mr. Nar Bdr. Thapa,
Raj Gram, Namchi, Sourth Sikkim.
5. Dr. Rajiv Gurung,
S/o K. B. Gurung,
Upper Sichey,
Gurung colony, Gantok.

34. Dr. Mayel P. Lepcha,
D/o S. D. Lepcha,
Tadong, East Sikkim.
35. Dr. Aden Bhutia,
D/o Angi Bhutia,
Yuksom West Sikkim. ----- Petitioners.

-VERSUS-

1. The State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
2. Secretary,
Department of Personal, ADM, Reforms
Training and Public Grievances,
Government of Sikkim, Gangtok, East Sikkim.
3. Secretary,
Health Care, Human Services and
Family Welfare Department,
Government of Sikkim,
Gangtok, East Sikkim.
4. Secretary,
Sikkim Public Service Commission,
Government of Sikkim,
Gangtok, East Sikkim. ----- Respondents.

PETITIONER
ADVOCATE (S)
FOR ----- Mr. Zangpo Sherpa, Mr. Sangay G. Bhutia,
Mr. Deewan Luitel and Mr. Jushan Lepcha.

RESPONDENT
ADVOCATE (S)
FOR ----- Mr. J. B. Pradhan, Addl. Advocate General,
Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. S. K.
Chettri, Asst. Govt. Advocate, Ms. Pollin Rai, Asst.
Govt. Advocate.

Case No.....

Serial No.	Date	Order (s) with Signature (s)
1	2	3
3.	8.10.2015	W.P. (C) No. 54/2015 Dr. Sandhya Rai & Ors. vs. State of Sikkim & Ors. BEFORE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE Present: Mr. Zangpo Sherpa and Mr. Jushan Lepcha, Advocates for the Petitioners. Mr. Karma Thinlay Namgyal, Sr. Govt. Advocate with Mrs. Pollin Rai, Asst. Govt. Advocate for the State-Respondents No. 1, 2 and 3. Ms. Sangita Pradhan, Legal Officer, DOP - Respondent No.2. Ms. Neera Thapa, Legal Officer, Health Department - Respondent No.3. Mr. Jiwan Kharga, Advocate for SPSC - Respondent No.4. *** Counter Affidavit has been filed on behalf of the Respondent No.4. The same is taken on record. <u>I.A. No.1 of 2015</u> Heard. By filing this application, Mrs. Pollin Rai, Learned Assistant Government Advocate, appearing on behalf of the Respondents No: 1, 2 and 3, seeks further time to file Counter Affidavit(s). Mr. Zangpo Sherpa, Learned Counsel for the Petitioners, on the other hand, has no objection to the prayer, but submits that the matter, as per Order dated 09.09.2015 in C.M. Appl. No. 244/2015, was to be heard today. On 09.09.2015, interim order as sought for was not granted, as the process of advertisement for the impugned recruitment issued by the Respondent No.4, had still not

Case No.

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		culminated. As per him, the situation has now changed as the last date for inviting applications is over and the interview may be called for at any time. Considering the anxiety expressed on behalf of the Petitioners, the uncertainty of the date of interview and the fact that in W.P. (C) No. 50 of 2015, in which the very same Notification is involved, an interim order had been passed, it would be in the interest of justice, if a similar order is passed in this case also. Keeping in view the ratio of reservation as provided under the Office Memorandum dated 10.7.2008 and that 73 posts have been advertised, the Respondents shall not fill up 35 vacancies until further orders. Although, it has been pleaded on behalf of the State Respondents that this Office Memorandum has been kept at abeyance by a Circular dated 11.7.2015, the question arises as to whether an Office Memorandum issued under Article 309 of the Constitution of India can be kept at abeyance by an executive order in the form of a circular. In my view, <i>prima facie</i>, that cannot be. For these reasons, it is made clear that the Respondents may act upon the impugned advertisement but, it shall be subject to the above directions. Subject to the above, prayer for time as sought for by the Learned Assistant Government Advocate, is allowed. Let Counter Affidavit be filed on or before 30.10.2015. I.A. No.1 of 2015 stands disposed of. List for orders on 30.10.2015.  Judge 8.10.2015

Index : Yes / No
Internet: Yes / No
at/bp

IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION

C.M. Appl. No. 244 OF 2015
(In W.P. (C) No. 54 OF 2015)

Dr. Sandhya Rai & Ors. ----- Petitioners/Applicants.

-VERSUS-

The State of Sikkim & Ors. ----- Respondents.

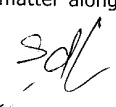
PETITIONER
ADVOCATE (S)

FOR ----- Mr. Zangpo Shcrpa, Mr. Sangay G. Bhutia,
Mr. Deewan Luitel and Mr. Jushan Lepcha.

RESPONDENT
ADVOCATE (S)

FOR ----- Mr. J. B. Pradhan, Addl. Advocate General,
Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. S. K.
Chettri, Asst. Govt. Advocate, Ms. Pollin Rai, Asst.
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