

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, Saurth Sikkim.
5. Dr. Rajiv Gurung,
S/o K. B. Gurung,
Upper Sichey,
Gurung colony, Gantok.

6. Dr. Rabin Rai
S/o Makku Rai,
Lower Tingrithang,
P/o Rabongla, Namchi south Sikkim.
7. Dr. Sanjay Rai
S/o Lt. Tek Bdr. Rai
Dalep Reshep, P.O Namphing,
South Sikkim.
8. Dr. Sachika Rai
D/o Mr. Indra Bdr. Rai
Sakyong Onglep,
P/o Gayzing, west Sikkim.
9. Dr. Meenakshi Dahal
D/o Rudra Prasad Dahal
Circular road, Mazi Gaon,
Jorethang, south Sikkim.
10. Dr. Suman Gurung
S/o Ben Kumar Gurung
Samdong, west Sikkim.
11. Dr. Tashi Chopel
S/o Mr. Dorjee Rinchen
5th mile Tadong, east Sikkim.
12. Dr. Salina Tamang
W/o karma Gurmyth Bhutia
Tadong bazaar, Gangtok.
13. Dr. Dawa Dolma Bhutia
W/o Mr. Kalzang Palzor,
Near Central Bank of India,
Mangan, north Sikkim.
14. Dr. Tsewang Donka
D/o Tsewong Rinzing Bhutia
N.S.S.O office, Gairigoan,
Tadong, East Sikkim.

- Sl.
No
1
2
15. Dr. Tshering Zomba Lachenpa
D/o Mrs. Saney Lachenpa
PWD Guest house,
Lachen North Sikkim.
16. Dr. Bunnu Pakimo
W/o. Phintso Dupchen Bhutia
Opp. Hyundai show room,
Metro point, lower Tadong,
East Sikkim.
17. Dr. Deepak Dhakal
S/o Nilakanta Dhakal.
Central Pendam,
East Sikkim.
18. Dr. Dubzor Lepcha
S/o Thendup Lepcha
Tingbong unit, upper Dzongu,
North Sikkim.
19. Dr. Aren Lepcha
D/o lt. Phurzang Lepcha
Near Public ground,
North Sikkim.
- E
2
1
20. Dr. Bal Krishna Chauhan
S/o lt. Chakra Bdr. Chauhan
Malbasey, Soreng,
West Sikkim.
21. Dr. Deki Ongmo Lachenpa
D/o Mr. Karma Jigmee Lachenpa
Old SNT Road, Mangan.
22. Dr. Srijana Subba
W/o Sagar Subba
Gayzing, West Sikkim.
23. Dr. Ram Bdr. Rai

24. Dr. Navin Subba
Near Singtam District Hospital,
Singtam, East Sikkim.
25. Dr. Rajesh Kharel
S/o Lt B.P. Kharel
Mamring, South Sikkim.
26. Dr. Twinkey Bhutia
W/o Mr. Rinzing Chopel
Gairi gaon, Chandmari, Gangtok.
27. Dr. Sheetal Chettri
W/o Vyas Vivek Sharma
Sayari road, Gangtok.
28. Nima Dolma Sherpa
D/O Late T.T. Sherpa
Deorali, Gangtok, East Sikkim
29. Roshnee Tamang
D/O Late Radesh Tamang
Lower Samdur, Ranipool
East Sikkim
30. Dr. Dichen Ongmu Bhutia
D/O Rinchen Bhutia
5th Mile Tadong, Gangtok,
31. Dr. Reena Tamang
D/O Dilip Tamang,
Naya Bazar, West Sikkim.
32. Dr. Birendra Subba
S/O M.S. Subba
Timburbong, Soreng,
West Sikkim
33. Dr. Protik Das

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

W.P.(C) No. 54 of 2015

Dr. Sandhya Rai & Ors. vs. State of Sikkim & Ors.

**BEFORE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

16. 17.11.2016 Present: Mr. Zangpo Sherpa and Ms. Mon Maya Subba,
Advocates for the Petitioners.

Mr. J.B. Pradhan, Addl. Advocate General with Mr.
S.K. Chettri and Mrs. Pollin Rai, Asst. Govt. Advocates
for the State-Respondents.

Mr. J.K. Kharga, Advocate for SPSC, Respondent
No.4.

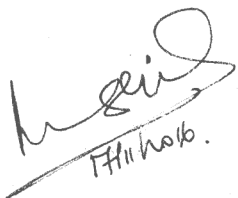
(1) Heard on I.A. No. 4 of 2016.

(2) This is an Application supported by an Affidavit dated
04.06.2016, filed by the Controller of Examinations, Sikkim
Public Service Commission (for short 'SPSC') on behalf of
Respondent No.4, placing on record;

(i) Letter bearing Reference No. 2485/G/DOP dated
31.5.2016 and

(ii) Notice bearing Reference No. 142/SPSC/2016 dated
4.6.2016.

(3) The letter is addressed to the Secretary, SPSC by the
Additional Secretary to the Government of Sikkim, Deptt. of
Personnel, Adm. Reforms, Training & Public Grievances,
submitting therein that in view of Notification No. 89/GEN/DOP
dated 28.4.2016, the said Officer has been directed to request


H.H. No. 16.

the Secretary, SPSC to withdraw the relevant advertisement regarding recruitment of General Duty Medical Officer (for short 'GDMO') for the purpose of allotting fresh rosters.

(4) The Notice bearing No. 142/SPSC/2016 dated 04.06.2016, is issued by the Controller of Examinations, SPSC, whereby the impugned Employment Notice bearing Nos. 05/2015 dated 24.7.2015 and 06/2015 dated 5.8.2015, have been withdrawn.

(5) It is pertinent to state that the Writ Petition arises out of the grievance of the Petitioners that 73 posts of GDMO had been advertised by the SPSC vide Advertisement No. 05/2015 dated 24.7.2015, without considering Notification No. 137/GEN/DOP dated 8.7.2008 (Annexure P-3) (for short 'Notification No.137') and Office Memorandum No. 1443/GEN/DOP dated 10.7.2008. The Notification, *inter alia*, provides for relaxation in matters of direct recruitment for such category of posts as may be specified in any notification for recruitment and includes relaxation in roster points, age, qualification or experience, etc. to such extent as may be feasible. Sub-Paragraph 2(f) provides that "temporary employees" means an employee working temporarily either on adhoc, muster roll, work charged, substitute, contract,

daily wages, consolidated pay or on co-terminus basis, etc. That, no provision for reserving 50% for temporary employees as envisaged by the aforesaid Notification had been made in the advertisement.

(6) It is submitted by learned Counsel for the Petitioners that Notification No. 137, when read with Office Memorandum bearing No. 1443/GEN/DOP dated 10.7.2008, provides that while making direct recruitment to any service or post in the department, 50% of the existing vacancies shall be filled up from amongst the temporarily engaged employees, if any, of the concerned Department and shall not in any case be in excess of 50% of the total number of posts in the direct recruitment quota. Contrary to the above provisions, in the impugned Employment Notice No. 05/2015 dated 24.07.2015, while advertising the posts of 73 GDMOs, does not provide for 50% reservation for the Petitioners who claim to be temporary employees being GDMOs who have been employed under the National Rural Health Mission (for short 'NRHM') and hence, 32 posts are required to be reserved for them.

(7) Learned Counsel for the Petitioners submits that apart from the Notification No.137, he also relies on Notification No. 196/GEN/DOP dated 22.7.2013 (Annexure P-22), which is a

policy decision for regularization of all Work-Charged/MR/Adhoc and Consolidated Employees, who have been working in Government Departments for more than five years and, therefore, a *mandamus* be issued by this Court in terms of the said Notification.

(8) Learned Additional Advocate General submits that the impugned Employment Notice has been withdrawn by the above Notice bearing No. 142/SPSC/2016 dated 04.06.2016, hence, the cause of action does not survive and, therefore, the Petition may be disposed of as being infructuous. That, Notification No. 196/GEN/DOP dated 22.7.2013, is a policy decision and cannot overrule the statutory provisions for recruitment, besides which the said Notification is confined to Work-Charged/MR/Adhoc and Consolidated Employees serving as Office Assistants, Junior Drivers and Office Attendants, etc., and does not cover the Petitioners, who are GDMOs under the NRHM, neither can it be enforced through a writ of *mandamus*.

(9) I have heard the rival contentions of learned Counsel at length.

(10) From the prayers in the Writ Petition, it is seen that the prayers are to reserve 32 posts out of 73 declared posts of

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GDMOs in terms of Notification No.137. In view of the said grievance, the Respondents have withdrawn the offending Notification. In such a situation, no cause of action survives.

(11) Accordingly, I.A. No. 4 stands disposed of.

(12) Consequently, the Writ Petition also stands disposed of as infructuous.

Judge
17.11.2016

Index : Yes / No
Internet : Yes / No

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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 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.

C.M. Appl. No. 244 of 2015

in

W.P.(C) No. 54 of 2015

Dr. Sandhya Rai & Ors. vs. State of Sikkim & Ors.

BEFORE

HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

16. 17.11.2016 Present: Mr. Zangpo Sherpa and Ms. Mon Maya Subba,
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for the State-Respondents.

Mr. J.K. Kharga, Advocate for SPSC, Respondent
No.4.

In view of the Order passed today in W.P.(C) No. 54 of
2015, C.M. Appl. No. 244 of 2015 also stands disposed of.

Judge

17.11.2016

Index : Yes / No

Internet : Yes / No

ds/bp