

High Court of Sikkim

Record of proceedings

**WP(C) No.57 of 2015**

Nar Bahadur Gurung

**Petitioner (s)**

VERSUS

State of Sikkim and Others

**Respondent (s)**

**Date :** 23-07-2018

CORAM :

**THE HON'BLE ACTING CHIEF JUSTICE  
MRS. JUSTICE MEENAKSHI MADAN RAI**

**For Petitioner (s)** Dr. (Mrs.) Doma T. Bhutia, Advocate as Legal Aid Counsel.

**For Respondent (s)**

**R-1 to R-3**

Mr. J. B. Pradhan, Additonal Advocate General.  
Mr. D. K. Siwakoti, Advocate.

**R-4 to R-6**

Mr. N. Rai, Senior Advocate.  
Ms. Tamanna Chhetri, Advocate.

**ORDER**

Reference notes at NSP 12 to 15 in File No. 207/SLAS/ ADMN/2013-2014-PT. II (REGULARIZATION OF TEMPORARY STAFF OF SIKKIM LEGISLATIVE ASSEMBLY SECRETARIAT) and on perusal of the entire documents on record, it is evident that the services of 108 (one hundred and eight) employees of the Sikkim Legislative Assembly have been regularized along with the regularization of services of Respondents No.6, namely, Chandra Prakash Sharma, in terms of the Notification No.196/GEN/DOP dated 02-07-2013 of the Government of Sikkim.

The Hon'ble Supreme Court in *Vijay Kumar Kaul and Others vs. Union of India and Others* : (2012) 7 SCC 610 while discussing the observations of the same Court in previous matters held as follows;

# High Court of Sikkim

## Record of proceedings

**“38.** In *Public Service Commission v. Mamta Bisht* [(2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208 : AIR 2010 SC 2613] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

“9. ... in *Udit Narain Singh Malpaharia v. Board of Revenue* [AIR 1963 SC 786], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called ‘CPC’) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [AIR 1965 SC 1153] , *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [(1974) 2 SCC 706 : AIR 1974 SC 2105] and *Sarguja Transport Service v. STAT* [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .)

10. In *Prabodh Verma v. State of U.P.* [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] and *Tridip Kumar Dingal v. State of W.B.* [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119 : AIR 2008 SC Supp 824], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

**39.** From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.”

Although the matter has been heard finally, in view of the above position and in the interest of justice and further to prevent multiplicity of litigation, I am of the considered opinion that the Petitioner is required to take necessary steps in this context as the services of 108 employees appointed under Rule 3(b) of the Sikkim

High Court of Sikkim

Record of proceedings

Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1983, were regularized in terms of the policy of the Government and on the basis of the recommendations of the Review Committee, constituted by the Hon'ble Speaker of the Sikkim Legislative Assembly vide Notification No.194(117)/SLAS/ ADMN/2013-2014 dated 12-09-2013.

Let the Petitioner take necessary steps.

List on 07-08-2018.

**Acting Chief Justice**

23-07-2018

Index : ~~Yes~~/No

Internet : Yes/~~No~~