



Order Order

Order with Signature

Office Note as to
action (if any)
taken on OrderWP (C) No. 20 of 2005

20. 22.7.08 Present: Mr. B. Sharma, Sr. Advocate with Mr. J.K. Kharka, Advocate for the petitioners.

Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan, Govt. Advocate for the State-Respondents.

Mr. A.Moulik, Sr. Advocate with Ms. Kessang Diki Bhutia, Advocate for the Respondent Nos. 4 to 17.

...

This is a writ petition filed originally by 7 writ petitioners, out of whom Nos. 3 and 7 have dropped out. The writ petitioners were all aspirants to the posts of Block Officers in the Forest Department in the State of Sikkim and thus, took an examination which was held in September 2003. 2229 candidates appeared in that examination and out of that number 269 were called for the interview. After interviews were held, 20 persons were selected and they were given appointments as Block Officers as will appear from Annexure P-4 of the writ petition which is a document calling for the 20 to report to the office for further details on

05.11.2003.



Order Order

Order with Signature

Office Note as to
action (if any)
taken on Order

So far the writ petitioners can raise no grievance and they raise none. They object to Annexure P-5 which is a document dated 01.04.2005, wherein 14 persons were appointed as untrained Block Officers and put on a probation period of 2 years of training. It is the case of the writ petitioners that those 14 were not selected out of the said interview, but they have been selected irregularly which is prohibited by the law.

The State-respondents say that these 14 persons, who were 'regularised', had been working as Block Officers from the year 2000-2001. In December 2000 there occurred suddenly a big shortage of Block Officers in the Forest Department. That was also a time when there was a big State scandal regarding indiscriminate felling of an enormous number of trees, especially in North Sikkim region, and of smuggling out of exotic trees and timber. There was litigation and the CBI was also involved.

The ad hoc appointment of the 14 private respondents was granted at that time. The



Order

Order with Signature

Office Note as to
action (if any)
taken on Order

State feels sympathetic towards the 14 respondents. According to the records they have worked faithfully and effectively and also in the comparatively difficult region of cold North Sikkim.

These 14 persons also took the examination of September 2003 and they were called to the interview. The petitioners were also called to the interview, but neither the petitioners nor the respondents were selected pursuant to the interview. The 20 persons who cleared the interview are quite different people and they are not parties to the instant writ petition.

On behalf of the private respondents it is submitted that the regularization date of theirs is anterior to the date of pronouncement of the Judgment in Uma Devi's case. According to them such regularization would not be against any decision by any Constitutional Bench of the Supreme Court, on the date such regularization was effected by the Government.



Serial No. of Order

Date of Order

Order with Signature

Office Note as to action (if any) taken on Order

It has to be borne in mind that this writ petition is not a public interest litigation nor is it the usual type of regularization petition where the ad-hoc worker petitions to the Court for regularization and the State-respondents are in the opposition. Here the issue arises in quite a different way, at the instance of a third party.

The petitioners do not prove before the Court or give any materials which are sufficient to indicate that they were amongst the next 14 candidates in the interview results after the 20 selected were selected. As such, even if we create holes by picking out the 14 working respondents from the Forest Department, we cannot insert the 5 writ petitioners in those 14 vacancies or in 5 of those 14 vacancies because they are not shown as the next most meritorious candidates. The only other way we can look at the grievance of the writ petitioners is the public interest way, which means we would have to un-employ the 14 respondents and call for a fresh selection to be made by the State for filling of those 14 vacancies now. Some of the



Order Order

Order with Signature

Office Note as to
action (if any)
taken on Order

respondents have crossed the age limit and they would face additional difficulties in this process.

But, as we have pointed out this is not a public interest litigation. The petitioners have to establish some rights of theirs before we can dislodge employed persons from their regular employment.

A point was raised about relaxation or enlargement of the direct recruit quota of the Block Officers, since all the 14 regularised respondents have to be considered as direct recruits. Even here the petitioners have a problem about establishing their private rights, because the prospective promotees are Head Forest Guards and none of the Head Forest Guards have complained in this writ petition or are parties here.

Very briefly put it appears to us that although the case of the 14 respondents is not perfect yet the case of the petitioners for dislodging 5 out of the said 14 is even less



Order Order

Order with Signature

Office Note as to
action (if any)
taken on Order

perfect. On this basis the writ petition is
dismissed without any order as to costs.

(A.N. Ray, CJ)

(A.P. Subba, J)