



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CONSTITUTIONAL JURISDICTION)

Writ Petition (C) NO. 27/2007

1. Shri Bhim Bahadur Chhetri,
son of Late Lall Bahadur Chhetri,
Resident of Dodak Busty,
P.O. Buriakhop, West Sikkim.
2. Shri Ramesh Challisey,
son of Shri Nirmal Prasad Challisey,
Resident of Namthang Maneydara Busty,
P.O. Maneydara, South Sikkim.
3. Shri Tashi Norbu Lepcha,
Son of Shri N. T. Lepcha,
R/o Development Area,
Below P.H.E. Water Tank ,
P.O. Gangtok, East Sikkim.

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PETITIONERS.

- Versus -

1. State of Sikkim,
Through the Secretary,
Human Resources Development Department,
Government of Sikkim,
Tashiling, East Sikkim.
2. Shri Arun Kumar Kalikotey,
C/O: Nirmal Kalikotey,
Resident of Upper Sichey,
P.O. Gangtok, East Sikkim.
3. Shri Bishu Kharel,
C/O: Suman Kharel,
Resident of Development Area,
P.O. Gangtok, East Sikkim.
4. Ms. Sangita Rai,
C/O: Sunata Rai,
Resident of Machong Busty,
P.O. Machong, East Sikkim.
5. Ms. Sunita Tamang,
Resident of Development Area,
P.O. Gangtok, East Sikkim.
6. Shri Arun Rai,
C/O: Phuchung Rai,
Resident of Namcheypong Busty,
P.O. Namcheypong, East Sikkim.



7. Shri Daniel Lepcha,
Resident of Jorethang,
P.O. Jorethang, South Sikkim.
8. Shri Basudev Sharma (Khanal),
Resident of Parkha Busty,
P.O. Machong, East Sikkim.
9. Ms. Sabitri Rai,
C/O: Dargay Busty,
Resident of Sang Bazar,
P.O. Sang Bazar, East Sikkim.
10. Shri Rajen Rai,
Resident of Geiling Samsing,
P.O. Chakung, West Sikkim.
11. Shri Lhendup Lepcha,
Resident of Upper Tathangchen,
P.O. Raj Bhawan, Gangtok,
East Sikkim.
12. Ms. Goma Sharma,
C/O: Laxmi Kafley,
Resident of Gereythang Busty,
P.O. Gereythang, West Sikkim.
13. Ms. Shanti Devi Bista,
C/O: A. B. Bista,
Resident of Tintek Chuba Busty,
P.O. Rakdong, East Sikkim.
14. Shri Dinesh Bhattarai,
C/O: P. R. Bhattarai,
Resident of Tareythang Busty,
P.O. Bering, East Sikkim.
15. Ms. Tika Maya Rai,
Resident of Chumbong Busty,
P.O. Chumbong, West Sikkim.
16. Ms. Meena Chettri,
Resident of Namphok Busty,
P.O. Simchuthang, South Sikkim.
17. Ms. Meena Sharma,
C/O: Jogendra Sharma,
Resident of Namin Busty,
P.O. Ranipool, East Sikkim.
18. Shri Promod Rai,
Resident of Zoom Busty,
P.O. Zoom, West Sikkim.



19. Shri Rabindra Bista,
Resident of Shiling Rakdong Busty,
P.O. Rakdong, East Sikkim.
20. Ms. Sarona Chettri,
C/O: K. B. Chettri,
Resident of Ranipool Bazar,
P.O. Ranipool, East Sikkim.
21. Shri Kishore Kumar Chettri,
Resident of Siktam Busty,
P.O. Sombaria, West Sikkim.
22. Shri Ganga Prasad Gurung,
Resident of Padamchey Busty,
P.O. Pakyong, East Sikkim.
23. Ms. Rachel Pegha,
Resident of Soreng Bazar,
Near Bhir Dara, P.O. Gangtok,
West Sikkim.
24. Ms. Jyoti Subba,
Resident of Hee-Yangthang,
P.O. Hee Bazar, West Sikkim.
25. Ms. Nirmala Gurung,
C/O: Tika Ram Gurung,
Resident of Tadong Busty,
P.O. Kaluk Bazar, West Sikkim.
26. Ms. Kaushila Gurung,
C/O: Champa Gurung,
Resident of 06th Mile Tadong,
P.O. Samdur, Gangtok, East Sikkim.
27. Ms. Sumitra Tamang,
Resident of Machong,
P.O. Machong, East Sikkim.
28. Shri Pemba Sherpa,
Resident of Upper Mukrung Ward,
Maneybong Block, P.O. Uttarey,
West Sikkim.
29. Ms. Karma Doma Tamang,
Resident of Pani House,
Below Shiva Mandir,
Gangtok, East Sikkim.
30. Shri Sachin Gurung,
Resident of Phong Bhanjyang,
P.O. Namthang, South Sikkim.



31. Shri Keshar Subba,
Resident of Hee-Yangthang,
P.O. Hee Bazar, West Sikkim.
32. Ms. Rajani Gurung,
Resident of Lingding Busty,
P.O. Gangtok, East Sikkim.
33. Ms. Pushpa Basnet,
C/O: G. K. Basnet,
Resident of Dentam Busty,
P.O. Dentam, West Sikkim.
34. Ms. Tara Devi Pradhan,
Resident of Timberboong Busty,
P.O. Timberboong, West Sikkim.
35. Shri Dorjee Lepcha,
C/O: Zamphey Lepcha,
Resident of Sangtok Sagyong Busty,
P.O. Gor, North Sikkim.
36. Ms. Leela Subba,
C/O: Premlall Subba,
Resident of Hee-Patal Busty,
P.O. Hee Gaon, West Sikkim.
37. Ms. Kenzing Ongmu Bhutia,
Resident of Chandmari,
P.O. Raj Bhawan, Gangtok,
East Sikkim.
38. Shri Saran Das Rai,
Resident of Rongli-Dalapchand,
P.O. Rongli, East Sikkim.
39. Shri Tika Rai,
C/O: Manideo Rai,
Resident of Pani House,
Below Shiva Mandir,
Gangtok, East Sikkim.
40. Ms. Nandita Bagdas,
w/o Late M. K. Bagdas,
Police Headquarters,
Reserve Lines,
Gangtok, East Sikkim.
41. Ms. Chandra Kumari Gurung,
C/O: Randhoj Gurung,
Resident of Tadong Busty,
P.O. Kaluk Bazar, West Sikkim.

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42. Ms. Yangchen Bhutia,
C/O: K. T. Bhutia,
Resident of Upper Tathangchen,
P.O. Raj Bhawan, Gangtok, East Sikkim.
43. Ms. Passang Yanki Bhutia,
Resident of Rongyek Busty,
P.O. Raj Bhawan, Gangtok, East Sikkim.
44. Ms. Ranjana Subba,
Resident of Namcheypong Busty,
P.O. Namcheypong-via-Pakyong, East Sikkim.
45. Mrs. Junu Rai,
Wife of Kiran Rai,
Resident of Mintokgang,
P.O. Raj Bhawan, East Sikkim.
46. Ms. Nirmala Bhattarai,
C/O: Durga Prasad Bhattarai,
Resident of Tareything Busty,
P.O. Bering, East Sikkim.
47. Ms. Kriti Maya Subba,
C/O: Major Subba,
Resident of Uttarey Bazar,
P.O. Uttarey Bazar, West Sikkim.
48. Ms. Sadhana Rai,
C/O: C. B. Rai,
Resident of Dalapchand Busty,
P.O. Dalapchand, East Sikkim.
49. Ms. Sancha Maya Gurung,
Resident of Pachey Samsing,
P.O. Pachey Samsing-via-Pakyong,
East Sikkim.
50. Ms. Meena Tamang,
Resident of Asangthang,
P.O. Asangthang, South Sikkim.
51. Ms. Aruna Rai,
Resident of Machong,
P.O. Machong, East Sikkim.
52. Ms. Nirmala Biswakarma,
C/O: T. B. Biswakarma,
Resident of Central Pendam-Sajong Busty,
P.O. Pendam, East Sikkim.
53. Ms. Tashi Lhamu Lepcha,
C/o Nim Pasang Lepcha,
Resident of Kaputhang,

Bh.



P.O. Mamring, Pakyong, East Sikkim.

54. Ms. Sumitra Gurung,
Resident of Kartok Busty,
P.O. Kartok, East Sikkim.
55. Ms. Dikki Tshering Bhutia,
Below West Point School,
Tathangchen, P.O. Raj Bhawan, East Sikkim.
56. Ms. Chewang Doma Bhutia,
Below Modern Secondary School,
Tathangchen, P.O. Raj Bhawan, East Sikkim.
57. Ms. Juna Kumari Limboo,
C/o Jagdeep Subba,
Resident of Bering Busty, P/o Bering,
East Sikkim.
58. Ms. Kanchi Bhutia,
P.O. Kartok, Pakyong; East Sikkim.
59. Ms. Ambika Rai (Bhutia),
P.O. Kartok, Pakyong, East Sikkim.
60. Ms. Mala Gurung,
C/o Bhim Gurung,
R/o Pachey Samsing, P.O. Pachey Samsing,
East Sikkim.
61. Misss Ananta Rai,
Namchi Gurpisey, P.O. Namchi,
South Sikkim.
62. Ms. Pavitra Gajmer,
C/o Deepak Lamichaney,
Bhansari Building, Pani House,
P.O. Deorali, East Sikkim.
63. Ms. Nirmala Ghatraj,
R/o Pachey Busty, Pakyong, East Sikkim.
64. Ms. Albina Rai,
R/o Bashilakha Busty, P.O. Pakyong,
East Sikkim.

... **RESPONDENTS.**

For the Petitioner

: Mr. A. K. Upadhyaya, Senior Advocate
with Mr. Sudesh Joshi, Mr. Dhurba
Tewari and Ms. Manita Pradhan,
Advocates.



For the Respondents : Mr. J. B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. Santosh K. Chettri, Asstt. Govt. Advocate for the State respondents.

BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.


Date of Hearing: 15.06.2010.

Date of Judgment: 15.06.2010.

J U D G M E N T


Ghosh, CJ.

On 26th April, 2007 an advertisement was published inviting applications from eligible local candidates for filling up vacancies of Primary Teachers. In the advertisement it was indicated that there are 71 vacancies altogether, of them, amongst others, 8 are reserved for Other Backward Class candidates, of which 2 are reserved for women. The advertisement also mentioned that 22 vacancies are reserved for Most Backward Class Community and amongst them 7 are reserved for women. At the same time, it was indicated in the advertisement that 9 vacancies are available for Scheduled Caste candidates of which 4 are reserved for women. Petitioners, originally 5 in number, responded to the advertisement. Subsequently, they all appeared at written examination followed by viva-voce. Thereafter, a select list was published. In that it was shown that each of the petitioners has been selected. However, the said list was cancelled and another select list containing names of 63 candidates was published, where it was shown that none of the petitioners has been selected. The said state of affair led to filing of the present writ



petition. During the pendency of the writ petition, two of the petitioners, having succeeded in subsequent selection of primary teachers, gave a go by to the challenge thrown by them in the present writ petition and, accordingly, they were deleted as petitioners of the present writ petition.

2. In the premises, the writ petition is now only by three writ petitioners, namely, Bhim Bahadur Chettri, belonging to Other Backward Class category, Ramesh Challisey, also belonging to Other Backward Class category, and Tashi Norbu Lepcha, belonging to Scheduled Tribe category. In the writ petition the main thrust was that in the first select list petitioners having been shown to have been selected, they could not be de-selected by publication of a subsequent select list. Official respondents in their counter affidavit have stated that the first select list was a product of mistake, in as much as, reservation for women as was available and published in the advertisement had not been followed while publishing the first select list. It was contended that despite many women candidates having out-beaten men candidates in merit were shown to have been selected against posts reserved for women, while the first select list was published, whereas they should have been selected against posts available to the category they belonged. It was contended that the said mistake was rectified in the second select list. The said respondents have brought on record all necessary materials to justify their contention. Those have been perused and there from it appears that contention of the said respondents is correct. A product of mistake does not give rise to any right and the same can always be rectified. In the circumstances, this Court is unable to give benefit to






the petitioners of the mistake that was committed in the first select list.

3. Petitioners however contended that altogether 71 vacancies were available and the second select list contained names of 63 candidates, which suggests that 8 vacancies were still available. They contended that as per the official respondents, of those 8 vacancies, 5 were reserved for Scheduled Castes and in as much as candidates belonging to Scheduled Castes did not succeed in the selection, 5 vacancies were carried forward, but the fact remains that there is no just reason for not supplying the remaining 3 vacancies, which were reserved, one for Most Backward Class (Blind Low Vision), one for Most Backward Class (Ex- Servicemen), and one for Scheduled Tribe (Ex-Servicemen), in as much as, Notification dated 20th November, 2003 relied by the said respondents makes it clear that no carrying forward of roster points reserved for Ex-Servicemen and persons with disability is permissible. Clause 6 of the said Notification makes the same amply clear. In the circumstances, as contended in the counter by the official respondents, they could not carry forward the vacancy reserved for Most Backward Class (Blind Low Vision), vacancy reserved for Most Backward Class (Ex- Servicemen), and the vacancy reserved for Scheduled Caste (Ex-Servicemen). In as much as, petitioner Tashi Norbu Lepcha is a Scheduled Tribe, he could supply the vacancy reserved for Scheduled Tribe (Ex-Servicemen) if the same was not carried forward, provided, on the basis of merit amongst Scheduled Tribe candidates, he could supply the vacancy. In order to ascertain the same, the matter was adjourned on the last occasion. After careful consideration of the merit list of Scheduled


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Tribe candidates, it is now not in dispute that if one more post was available for Scheduled Tribe candidates, petitioner Tashi Norbu Lepcha could supply the same. In as much as, Clause 6 of Notification dated 20th November, 2003 dealing with the subject makes it abundantly clear that no reserved post for Ex-Servicemen can be carried forward, and if an Ex-Serviceman is not available then the vacancy should be supplied by a candidate belonging to the same reserved category as per merit, there is no dispute that Tashi Norbu Lepcha was entitled to supply the said vacancy and, accordingly, a mandamus is issued upon the official respondents to ensure supplying of the said vacancy by Tashi Norbu Lepcha. The said respondents are directed to comply with the said direction as quickly as possible, but not later than two months from today.

4. Learned Counsel for petitioners submitted that one vacancy reserved for Most Backward Class (Blind Low Vision) and another for Most Backward Class (Ex-Servicemen) similarly could not be carried forward in view of the said notification dated 20th November, 2003. Being alive of the situation that none of the remaining two petitioners belong to Most Backward Class category and in the event the said two reserved vacancies were not carried forward, the same could only be supplied, on the basis of merit, by persons belonging to the same category, i.e., Most Backward Class category, it was submitted that the said vacancies could be supplied by anyone including persons belonging to Other Backward Class category by taking cue to the words 'and/or' used in the second sentence of clause 6 of the said notification. The said sentence is as follows: -

"6. If no sufficient number of eligible candidates belonging to ex-servicemen, persons with disability and Sports persons







and Artisans of excellence are not available, the unfilled vacancies shall be filled by the candidate belonging to the same reserved category and/or as per merit as the case may be."

It was contended that in view of what has been provided in the said sentence, the unfilled reserved vacancy not to be carried forward for non-availability of the person for whom such reservation had been made, can be supplied by anyone, and to make the same clear the words 'and/or' have been used. A careful reading of the sentence would make it abundantly clear that the words 'and/or' used in the said sentence are superfluous, giving no direction at all. The clause directs that such vacancy in the absence of ex-servicemen or persons with disability belonging to a reserved category shall be supplied by a member belonging to that reserved category. In accordance with the notification dated 17th November, 2003, a vacancy available for Most Backward Class category is required to be carried forward for three years. Reservation for an ex-serviceman belonging to Most Backward Class category is a reservation available for Most Backward Class category, and, accordingly, unless the said vacancy is carried forward for three years, for non-availability of an appropriate ex-serviceman, the same would be contrary to law governing the subject. The matter requires to be thus closed.

5. However, petitioners contended that in the advertisement it was stated that the required eligibility of the candidates was two years teachers' certificate from DIET/Recognised Institute having NCTE courses. It was contended that some of the private respondents did not have two years teachers' certificate either from DIET or from a recognised institute having NCTE courses. Private respondents have not yet been noticed. It appears that in fact some of the respondents,





i.e., respondents no.15, 35, 38, 55 and 56 do not have two years' teachers certificate from DIET, although they have one year's teachers certificate from DIET. It also appears that they were already teachers and were given one year's teachers training by DIET, when it was not recognised by NCTE. In the circumstances, at least those respondents may be noticed to state their part of the story. However, that would not result in grant of any benefit to any of the petitioners, in as much as, even if their appointments are cancelled, the vacancies that would thus arise cannot be supplied by petitioners, in as much as, respondent no. 15, who belongs to Most Backward Class category, was appointed on the basis of merit as an open category candidate; whereas respondent nos. 35, 55 and 56 belong to Scheduled Tribe category and respondent no. 38 belongs to Most Backward Class category and they were appointed in the vacancies reserved for their respective categories. This petition is not a public interest litigation and selection of the said respondents having not interfered with any right of the petitioners, I think it is not necessary to go into the question whether the said respondents were in possession of appropriate qualification for appointment.

6. The writ petition is accordingly disposed of with the direction as above.


Chief Justice
15.06.2010

rsr/at/pm