

F.R.

**IN THE HIGH COURT OF SIKKIM AT GANGTOK**  
(CIVIL EXTRA ORDINARY JURISDICTION)



Writ Petition (C) No. 40 of 2009



1. Shri O. P. Pradhan,  
S/o Shri N. B. Pradhan,  
R/o Soreng Bazaar,  
West Sikkim.
2. Shri Ajeet Pradhan,  
S/o Late H. P. Pradhan,  
R/o Rhenock Bazaar,  
East Sikkim.
3. Shri Tashi Yousal,  
S/o Late Tenzing Bhutia,  
R/o Adda House, Gyalshing,  
West Sikkim.
4. Shri Sonam Tshering,  
S/o Lt. T. Wangdi Bhutia,  
R/o Arithang, Gangtok,  
East Sikkim.
5. Shri Jeewan Thapa,  
S/o Shri D. B. Thapa,  
R/o Lingding Busty,  
Below SDF Bhawan,  
East Sikkim.
6. Shri Bhanu Bhakta Sharma,  
S/o Lt. S. L. Sharma,  
R/o Timburbung,  
West Sikkim. ... **PETITIONERS.**

**- Versus -**

1. The State of Sikkim,  
Through Secretary,  
Department of Personnel,  
Administrative Reforms and Training,  
Government of Sikkim,  
Gangtok, East Sikkim.
2. Department of Energy and Power,  
Through the Secretary of the Department,  
Government of Sikkim,  
Gangtok, East Sikkim.

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3. Sikkim Public Service Commission,  
Through the Chairman of the Commission,  
Old West Point School,  
Below Private Bus Stand,  
Gangtok, East Sikkim.
  4. Shri L. P. Chhetri,  
Assistant Engineer,  
Rural Management and Development Deptt.,  
Government of Sikkim,  
Gangtok, East Sikkim.
  5. Shri Deepak Sewa,  
Assistant Engineer,  
Tourism Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  6. Shri O. N. Sharma,  
Assistant Engineer (Retd),  
Energy & Power Department,  
Government of Sikkim,  
Topakhani, East Sikkim.
  7. Shri T. R. Dhakal,  
Assistant Engineer (Retd.),  
Commercial Sub Division - IV,  
Energy & Power Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  8. Shri K. N. Sharma,  
Assistant Engineer,  
Maintenance Sub Division-I,  
Energy & Power Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  9. Shri Sonam Tshering Bhutia,  
Assistant Engineer,  
Operation & Maintenance,  
Lower Laygap Hydrol Project,  
Energy & Power Department,  
Government of Sikkim,  
Ranipool, East Sikkim.
  10. Shri N. P. Pandey,  
Assistant Energy,  
Sub Division-I,  
Energy & Power Department,  
Government of Sikkim,  
Rongli, East Sikkim.
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11. Shri Chand Kr. Rai,  
Assistant Engineer,  
Energy & Power Department,  
Government of Sikkim,  
Namchi, South Sikkim.
  12. Shri Suren Rai,  
Assistant Engineer,  
Construction Sub Division,  
Energy & Power Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  13. Shri Dharni Dhar Koirala,  
Assistant Engineer,  
Maintenance Sub Division,  
Lower Laygap Hydrol Project,  
Energy & Power Department,  
Government of Sikkim,  
Ranipool, East Sikkim.
  14. Shri Bishnu Kr. Rai,  
Assistant Engineer, Electrical,  
Health and Family Welfare Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  15. Shri Pradeep Chhetri,  
Assistant Engineer,  
Extra High Voltage Sub Division,  
Energy & Power Department,  
Government of Sikkim,  
Melli, South Sikkim.
  16. Shri Sonam Wangdi Bhutia,  
Assistant Engineer,  
North Sub Division-I,  
Energy & Power Department,  
Government of Sikkim,  
Gangtok, Sikkim.
  17. Shri Karma Thendup Lepcha,  
Assistant Engineer,  
Maintenance Sub Division,  
Energy & Power Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
  18. Shri Hissay Dorjee Bhutia,  
Assistant Engineer, Electrical,  
Human Resource and Development Deptt.,  
Government of Sikkim,  
Gangtok, East Sikkim.
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19. Shri Sonam Dorjee Bhutia,  
Assistant Engineer,  
Relli Chu,  
Energy & Power Department,  
Government of Sikkim,  
Gyalshing, West Sikkim.
20. Smt. Vijay Laxmi Rai,  
Assistant Engineer,  
Maintenance Sub Division,  
Energy & Power Department,  
Government of Sikkim,  
Melli, South Sikkim.
21. Shri Chandramani Tewari,  
Assistant Engineer,  
Temi Sub Division,  
Energy & Power Department,  
Government of Sikkim,  
Temi, South Sikkim.
22. Shri Norbu Wangdi Bhutia,  
Assistant Engineer,  
Rural Management and Development Deptt.,  
Government of Sikkim,  
Gangtok, East Sikkim. ... **RESPONDENTS.**

**For the Petitioners** : Mr. A. K. Upadhyaya, Senior Advocate  
with Mr. Dhurba Tewari, Mr. Thupden G.  
Bhutia and Mr. Ashim Chettri, Advocates.

**For the Respondents** : Mr. J. B. Pradhan, Additional Advocate  
General with Mr. Karma Thinlay  
Namgyal, Govt. Advocate, Mr. Santosh  
K. Chettri, Asstt. Govt. Advocate and Mr.  
J. K. Kharka, Advocate for the  
Respondent Nos.1, 2 and 3.

Mr. Jorgay Namkha, Advocate for the  
Respondent Nos.4 to 22.

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

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*Last Date of Hearing: 08.06.2010.*

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***Date of Judgment: 16.06.2010.***

**J U D G M E N T*****Ghosh, CJ***


Writ petitioners were Assistant Engineers on work charged establishment in the Department of Energy and Power. On 18<sup>th</sup> of February, 2004, they were appointed in the regular establishment. Private respondents, who were Junior Engineers in the regular establishment, were promoted to the posts of Assistant Engineers in the regular department in or about December, 2003. In the writ petition, it is being contended that in view of Rules governing the subject, petitioners or some of them should be deemed to be senior to private respondents or some of them.


2. It is the contention of petitioners that in terms of Sikkim State Engineering (Civil, Electrical and Mechanical) Service Rules, 1989, method of recruitment to the service is (a) by direct recruitment, through a competitive examination and or selection by interview to be held by the Commission, to the extent of 50% of the vacancies to be filled in any year and (b) by promotion to the remaining 50% through limited departmental competitive examination to be held by the Commission from among persons holding the post of Junior Engineers or any other post declared equivalent thereto by Government. It was contended that in terms of the said Service Rules, year means the financial year commencing from the 1<sup>st</sup> day of April and ending on 31<sup>st</sup> day of March of the next following year. It was contended that whereas the petitioners were directly recruited through selection by interview held by the Commission, the private respondents were promoted in the same financial year, i.e. the





financial year commencing from 1<sup>st</sup> April, 2003 and ending on 31<sup>st</sup> March, 2004. It was contended that after such recruitment, inter-se-seniority between petitioners and private respondents was to be governed by Sikkim State Services (Regulation of Seniority) Rules, 1980 and in particular Clause (e) of Rule 4 thereof. It was contended that in terms of Clause (e) of Rule 4 of the Seniority Rules, relative seniority between petitioners and private respondents was required to be determined according to rotation of vacancies between direct recruits and promotees and the date of their substantive appointment to the service. Learned Counsel for petitioners cited a Division Bench judgment of this Court rendered on 16<sup>th</sup> August, 2000 in Writ Petition (C) No. 9 of 2000 and other connected Writ Petitions for the proposition that seniority is required to be fixed in accordance with quota fixed and when all the appointments are substantive, later part of Clause (e) of Rule 4 is of little relevance. It was contended that after the said judgment was rendered, an explanation was inserted in Clause (e) of Rule 4 to make the matter further clear by providing format of a roaster, which suggests that the first place should be occupied by promotee, while the second by direct recruit and again the third by promotee and the fourth by direct recruit and so on. It was contended that if the said quota rule is applied, all the petitioners cannot be treated as juniors to private respondents, for petitioners were appointed and respondents were promoted in the same year.

**3.** Official respondents as well as private respondents contended that petitioners were not direct recruits and accordingly, Clause (e) of Rule 4 of the Seniority Rules had no application. It was contended that Clause (f) of Rule 4 of the Seniority Rules was applicable and the




said rule has been applied by Government after acceptance of the report of One Man Commission. Therefore, the dispute in the instant case is whether petitioners were direct recruits or not. If petitioners were direct recruits, Clause (e) of Rule 4 of the Seniority Rules will apply and accordingly, it would be a requirement to ascertain whether seniority, as has been fixed, is in accordance with Clause (e) of Rule 4 of the Seniority Rules.

4. In order to ascertain whether petitioners were direct recruits, one is required to take note of Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules, which is as follows :-

“By direct recruitment through a competitive examination and or selection by interview to be held by the Commission.”

It is the contention of petitioners that direct recruitment as envisaged in Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules may be through a competitive examination or by selection through interview. It was contended that such competitive examination or selection through interview should be held/made by the Commission, is the mandate of the said Clause. It was submitted that petitioners were called at an interview conducted by Sikkim Public Service Commission and thereupon, they were recommended for appointment and upon acceptance of such recommendation, petitioners were appointed. It was contended that in such situation, it cannot be contended that petitioners were not direct recruits.

5. It was contended on behalf of respondents that Rule 30 of the Service Rules has granted power to Government to relax any of the provisions of the said Rules and in exercise of such power,






Government relaxed the method of recruitment prescribed in Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules to utilise 50% direct recruitment quota for regularisation of petitioners. It was submitted that, therefore, petitioners were not direct recruits, but they were regularised and accordingly, clause (e) of Rule 4 of the Seniority Rules had no application in their case.


6. Petitioners do not dispute that power of relaxation was, in fact, exercised by Government in relation to direct recruitment quota for regularisation of petitioners, but they contend, as was the requirement of Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules, they were selected by Commission after holding interview and accordingly, they should be deemed to be direct recruits. In other words, petitioners contend that relaxation was to avoid offering of the direct recruit quota to people other than petitioners. It was submitted that, therefore, it should be deemed in law that petitioners were direct recruits and, therefore, inter-se-seniority between them and private respondents is required to be determined in accordance with Clause (e) of Rule 4 of the Seniority Rules.

7. It is true that petitioners were interviewed by Commission before they were recruited. It is also true that petitioners were recommended by Commission for being recruited, which suggests they were selected. At the same time, acceptance of the recommendation of Commission resulted in recruitment of petitioners. The question, however, is, taking those into account, can it be said that petitioners were direct recruits in terms of Clause (e) of Rule 4 of the Seniority Rules? Fact remains, while exercising power under Rule 30 of the Service Rules,

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Government relaxed the whole provision relating to method of recruitment contained in Rule 7 of the Service Rules, and not only Clause (a) of Sub-Rule 1 thereof, with a view to regularise petitioners, who were then work-charged Assistant Engineers, as Assistant Engineers in the service in consultation with Sikkim Public Service Commission. Therefore, the whole method prescribed in Rule 7 of the Service Rules was relaxed and altered for the purpose of utilizing the quota available for direct recruits to regularise petitioners in consultation with Sikkim Public Service Commission. Accordingly, interview of petitioners by Sikkim Public Service Commission should be deemed to facilitate such consultation and not selection. At the same time, recruitment pursuant to recommendation of Sikkim Public Service Commission should be deemed to be the outcome of such consultation and cannot be treated as appointment pursuant to selection by Sikkim Public Service Commission. Furthermore, all the existing work-charged Assistant Engineers were recommended in course of such consultation. Petitioners were, thus, not recruited as direct recruits in terms of Clause (a) of Sub-rule 1 of Rule 7 of the Service Rules and accordingly, they cannot be treated as direct recruits in terms of Clause (e) of Rule 4 of the Seniority Rules. In the circumstances, Clause (f) of Rule 4 of the Seniority Rules applied to the case of petitioners, which provides that seniority of persons, who are appointed to the service by a method other than by selection or by examination shall be determined ad-hoc by the State Government by a special order and admittedly such an order was passed finally by the State Government upon acceptance of the report of the One man





. Commission. There is, therefore, nothing further to be done in the Writ Petition.

8. Accordingly, the Writ Petition stands dismissed without any order as to costs.

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Chief Justice  
16.06.2010

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