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12.	5.6.08	<p>Present: Mr. A.K. Upadhyaya, Sr. Advocate with Mr. Ashim Chhetri, Mr. S. Joshi and Ms. Manita Pradhan, Advocates for the Petitioner.</p> <p>Mr. J.B. Pradhan and Mr. Karma Thinlay, Govt. Advocates for the State-Respondents.</p> <p>...</p> <p>This is a writ petition where the petitioner confines his prayers today to two reliefs only. The first relief is that he be given three advance increments with effect from 30.06.1988, which is the date on which he secured a private second class M.Sc. degree in Mathematics from the Bundelkhand University in the District Jhansi in U.P.</p> <p>He bases his claim on a Notification dated the 24th October 1980 (page 19) wherein it is stated against item 1 (B)(vi) that Post Graduates will get three advance increments at the lowest rate of the relevant scale for obtaining post graduate qualification.</p> <p>However, the said incentive was withdrawn by Notification dated 6th March, 1990 (page 25). By a letter dated the 2nd of March, 1989 the writ petitioner asked for the said increments with effect from 30th June, 1988.</p>	



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By a letter dated 9th May, 1989 the respondents asked for willingness of the writ petitioner to join as Post Graduate Teacher teaching in a Secondary School. Such willingness was affirmatively conveyed by the writ petitioner but the respondents kept silent. Thereafter the withdrawal Notification was published and by a letter dated the 25th August, 1990 the respondents intimated the writ petitioner that upon the withdrawal of the Notification he was no longer entitled to the three advance increments.

If the writ petition had been filed in or about the year 1990 or thereabouts, there might have been a case to consider, and for deciding upon the entitlement of the writ petitioner for the increments with retrospective effect even after the withdrawal of the Notification.

But the writ petition was filed some 16 years later in the year 2006. When there is such gross delay, it would not be proper to grant huge arrears to the writ petitioner and enter into numerous calculations spreading over 16 years. Even if the writ petitioner is assumed to have an arguable case, he has slept over it for so long that he has disintitled himself ~~from~~ even

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from consideration of his case at this distance of time. The first relief of the writ petitioner, therefore, cannot be granted.

The next relief is with regard to a scale promotion (as opposed to post promotion). On or about 29th July, 2005 (page 30) the writ petitioner was awarded advancement grade in the scale of Rs.7000-225-11500/- with effect from 22nd January, 1997.

Although the writ petitioner is only a graduate teacher, this new scale was awarded to him after completion of more than 10 years of continuous service is the scale of PGT or Post Graduate Teacher. This scale promotion was granted to the writ petitioner on the basis of the provisions of the Sikkim Government Services (Advancement Grade) Rules, 1999 (from page 60).

Under paragraph 6 (5) of the said Rules, it is stated as follows: -

“6 (5) The corresponding pay scale of advancement grade shall not be less than the pay scale prescribed for the post to which Government servant is eligible to be promoted as per the relevant recruitment rules.”



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It will be seen that the advancement grade is not to be less than the pay scale prescribed for the post to which the writ petitioner was eligible to be promoted.

According to the writ petitioner such promotional post for him would be the post of the Principal of a Senior Secondary School.

For substantiating this, he refers to the Schedule of a Notification of the State Government dated the 22nd June, 1992 (page 32 to 34).

From column 8 of the said Schedule, he points out that the educational qualification for direct recruitment is Master's Degree with B.Ed./M.Ed. with 7 years teaching experience and column 9 specifies that the promotional qualification is the same as the qualification for direct recruitment. He submits that he has both a B.Ed. and a Post Graduate Degree and, therefore, his promotional post is Principal of a Senior Secondary School drawing a scale of pay which starts, not at Rs.7000/- as awarded to him, but at the higher figure of Rs.9000/-.

The respondents submit that the promotional post is to be fixed upon not only



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with regard to the educational qualification but all other matters as well. One of the most important of such other considerations is determining whether the writ petitioner was in a cadre post which is a feeder post for promotion to the level of Principal of Senior Secondary Schools. If he is not in that feeder post, then and in that event, notwithstanding his sufficient educational qualification, the promotee post in question would not be the correct one to determine his scale.

The very same Schedule at page 34 is relied upon by the respondents also. They show from column 11 thereof that the feeder posts are (i) Headmaster of Secondary Schools with 15 years service and (ii) PGT with B.Ed. with 7 years regular service.

The respondents further point out that the writ petitioner was and still is, post wise, only a graduate teacher and neither a Head Master nor a PGT (Post Graduate Teacher).

According to them the scale promotion has been correctly fixed at the next higher grade which, for a graduate teacher, is the grade of the post graduate teacher.



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It is quite clear that the respondents' submission in this case is not only more logical but the only submission which can be accepted from any point of view. As such the writ petitioner is not entitled to the second relief either. The writ petition is dismissed without any order as to costs.

Written synopsis of submission (as corrected) submitted today on behalf of the petitioner be kept on record and be signed by the Principal Court Officer.

(A.N. Ray, CJ)

(A.P. Subba, J)