



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Extraordinary Jurisdiction)

DATED : 01.09.2010

CORAM

HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE S.P. WANGDI, JUDGE

Writ Petition (C) No. 43 of 2009

Shiva Nand Misra (Joint Director),
Human Resource Development Department
Tashiling Secretariat,
Gangtok, East Sikkim.

...Petitioner.

-versus-

1. The State of Sikkim,
Through Secretary,
Department of Personnel,
Administrative Reforms and Training,
Government of Sikkim,
Gangtok, East Sikkim.
2. The Secretary,
Human Resource Development Department
Tashiling Secretariat,
Gangtok, East Sikkim.
3. Smt. Mamta Thapa,
Additional Director,
Human Resource Development Department
Tashiling Secretariat,
Gangtok, East Sikkim.

4. Shri O.P. Basnett,
Additional Director,
Human Resource Development Department
Tashiling Secretariat,
Gangtok, East Sikkim.

5. Shri M.P. Subba,
Additional Director,
Human Resource Development Department
Tashiling Secretariat,
Gangtok, East Sikkim.

...Respondents.

For the petitioner	: Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Mukul R. Parajuli, Advocate
For the respondents	: Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. S.K. Chettri, Asst. Govt. Advocate and Mr. Bhushan Nepal, Advocate/ Retainer for the State.

JUDGEMENT

DINAKARAN, CJ

The writ petitioner herein prays for a writ of Mandamus/Certiorari questioning the promotion of respondents no. 3, 4 and 5 as Joint Director on officiating capacity and consequently the inter-se seniority and further that he should be promoted to the post of Joint Director prior to the date of promotion of the respondents no. 3, 4 and 5 i.e. 24.01.2009.



1.1 The service of the petitioner and respondents no. 3, 4 and 5 are governed by The Sikkim State Education Service Rules, 1996 as well as the Sikkim State Services (Regulation of Seniority) Rules, 1980. As per The Sikkim State Education Service Rules, the post of Deputy Director and the post of Principal of Senior Secondary Schools were treated at par for promotion to the post of Joint Directors on completion of 8 years of regular service as Deputy Director/Principal of Senior Secondary Schools, as per Rule 7 and Schedule II of the said Sikkim State Education Service Rules. The relevant portion of the Schedule reads as follows:

" SCHEDULE - II
(see rule 7)

Sl. No.	Post/grade	Mode of recruitment	Eligibility conditions
1.	Assistant Director Junior Grade	100 per cent by promotion	8years regular service as Assistant Education Officer.
2.	Deputy Director Senior Scale	100 per cent by promotion	6 years regular service as Assistant Director.
3.	Joint Director Selection Grade II	100 per cent by promotion	8 years regular service as Deputy Director. This includes induction of Principals of Senior Secondary Schools at this level.
4.	Additional Director	100 per cent by promotion	4 years regular service as



Selection Grade I		Joint Director.
5. Director Supertime Grade II	100 per cent by promotion or by deputation	4 years regular service as Additional Director.

1.2 According to the petitioner, respondents no. 3, 4 and 5 were promoted as Deputy Director in the year 2001 even though they were not eligible for the same.

1.3 The petitioner further contends that on 15.06.1999, an amendment was brought to the said Service Rules, which reads as under: -

" GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE
REFORMS & TRAINING
GANGTOK.

NO. 17/GEN/DOP

DATED: 15.06.1999

NOTIFICATION

In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Sikkim is hereby makes the following rules to amend the Sikkim State Education Service Rules, 1996, namely: -

Short title and commencement:

1.(1) These rules may be called the Sikkim State Education Service (Amendment) Rules, 1999.

(2) They shall come into force at once.

Amendment of Schedule II

2. In the Sikkim State Education Service Rules, 1996, for the existing Schedule II, the following Schedule shall be substituted namely: -




SCHEDULE - II
(see rule 7)

Sl. No.	Post/grade	Mode of recruitment	Eligibility conditions
1.
2.
3.	Joint Director Selection Grade II	i) 34% from amongst the Principals of Senior Secondary School ii) 66% from amongst the Deputy Directors	8(Eight) years regular service as Principal of Senior Secondary School. 8(Eight) years regular service as Deputy Director. "

2. On the strength of the said amendment dated 15.06.1999, the petitioner submits that the respondents no. 3, 4 and 5, were promoted to the post of Deputy Director in the year 2001 on officiating basis, and were thereafter promoted to the post of Joint Director with effect from 13.12.2002, 24.12.2002 and 24.12.2002 respectively, on officiating basis. The petitioner's grievance is that even though he had completed more than 11 years of regular service as Principal, Senior Secondary School, he was not considered for promotion to the post of Joint Director on the said relevant dates. According to the petitioner, as per the amendment dated 15.06.1999, he is entitled to be considered for promotion to the post of Joint Director even before respondents no. 3, 4 and 5 were promoted





as Joint Director. Hence, the petitioner was constrained to move this Court in W.P.(C) No. 3 of 2006, which was disposed of by Order dated 20.05.2008, which is extracted as hereunder:

"It is recorded that promotions have been granted to the writ petitioners who had grievance. It has been granted with effect from 22.05.2007 the date of the Court's earlier order. The writ petitioners now would have something even more, and they want the Court to enter into the question of their seniority involving several private parties. In our opinion this would not be just or equitable. Let the writ petitioners be happy with what they have got in pursuance of the Court's order. Steps taken by the parties so far are confirmed. The writ petition is disposed of without any further or other orders.


Sd/-
(A.N. Ray, CJ)

Sd/-
(A.P. Subba, J)"

The said order dated 20.05.2008 has become final.

3. Thereafter, the petitioner made a representation dated 08.12.2009 to the authority concerned, namely, the Secretary, Department of Personnel, Administrative Reforms and Training, Government of Sikkim, respondent no. 1, claiming his seniority above the aforementioned respondents and promotion to the post of Additional Director with effect from 16.10.2009, the date on which the respondents no. 3, 4 and 5 were subsequently promoted. As there was no response to the representation from the said respondent no. 1, the petitioner has





filed the present writ petition questioning the promotion of respondents no. 3, 4 and 5 to the post of Joint Director, as the same is contrary to the amendment dated 15.06.1999 issued by the Stat Government and he has prayed that he be given inter-se seniority and be placed above respondents no. 3, 4 and 5 and accordingly he should be promoted to the post of Additional Director, prior to respondents no. 3, 4 and 5, who were promoted to the said post on 16.10.2009.

4. Heard.

5. In this regard, it is apt to refer to the law laid down by the apex Court in ***Karnataka Power Corpn. Ltd through its Chairman & Managing Director and another vs, K. Thangappan and another*** reported in **(2006) 4 SCC 322**, wherein it held as follows: -

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed in *Durga Prashad v. Chief Controller of Imports and Exports*. Of course,




the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* (PC at p.239) was approved by this Court in *Moon Mills Ltd. V. M.R. Meher* and *Maharashtra SRTC v. Shri Balwant Regular Motor Service*. Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India* that no relief can be given to the petitioner who without





any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal* that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important fact which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmia Setty v. State of Mysore*. This was reiterated in *Rabindranath Bose case* by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan*

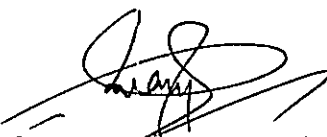
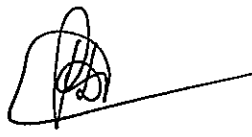


Samantaray making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See *State of Orissa v. Arun Kumar Patnaik* also)."

6.1 The above ruling of the apex Court made in ***Karnataka Power Corpn.*** case (vide *Supra*) is squarely applicable to the facts and circumstances of the present case.

6.2 In the present writ petition, we find that the petitioner is not only challenging the promotion of the respondents no. 3, 4 and 5 as Deputy Director made in the year 2001, but also challenges the subsequent promotion as Joint Director, which were already rejected by this Court by its Order dated 20.05.2008 passed in W.P.(C) No. 03 of 2006, referred to above. Since the said Order dated 20.05.2008 has become final, it may not be proper for this Court to consider and grant relief as prayed for by the petitioner.

Hence, the writ petition fails, both on the ground of laches as well as in view of the Order dated 20.05.2008 made in W.P.(C) No. 03 of 2006 of this Court and accordingly the same is dismissed. However, no order as to costs.


(S.P. WANGDI, J) 
(P.D. DINAKARAN, CJ)

Index : Yes/No
Internet : Yes/No

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