



# THE HIGH COURT OF SIKKIM : GANGTOK

## Writ Petition (C) No. 46 of 2005

Upendra Nath Dubey  
PGT (Maths)  
Govt. Sr. Sec. School, Sadam  
South Sikkim.

... Petitioner

-Versus-

1. The State of Sikkim  
through the Commissioner-cum-Secretary  
Human Resource Development Department  
Government of Sikkim  
Gangtok, Sikkim.
2. Sri D.R. Kharel (Special Secretary)  
Human Resource Development Department  
Government of Sikkim  
Gangtok, Sikkim.
3. The Accounts Officer  
Human Resource Development Department  
Government of Sikkim  
Namchi, South Sikkim.

... Respondents.

For the Petitioner : Mr. U.N. Dubey in person.

For the Respondents: M/s J.B. Pradhan and Karma Thinley, Government  
Advocates

**PRESENT: HON'BLE MR. JUSTICE AJOY NATH RAY, CHIEF JUSTICE  
AND  
HON'BLE MR. JUSTICE N. SURJAMANI SINGH, JUDGE**

---

**DATE OF JUDGMENT : 05<sup>TH</sup> MARCH, 2007.**

---



## JUDGMENT

A.N. Ray, CJ.

The Writ Petition can only be and is hereby dismissed. The grievance of the Writ Petitioner is against the order of the Department dated 19.10.2005, whereby he was granted advancement grade with effect from 22.3.2004 as Post Graduate Teacher (Mathematics).

2. In 1999, Government Rules have come into operation whereby 10 years' continuous service is needed as P.G.T. for the purpose of securing advancement grade.

3. The calculation made by the Government on the basis of the service career of Dubey is as follows: -

A. From 16.7.1987 to 15.12.1987 he worked only as Graduate Teacher and that also on ad hoc basis.

B. He worked on contract from 16.2.1988 to 21.3.1989 but then again only as a Graduate Teacher.

C. As Post Graduate Teacher he worked from 22.3.1989 to 21.3.1991 on contract basis for two years.

D. From 22.3.1991 to 09.06.1996 there was a gap in service.


E. The Writ Petitioner was regularized on 10.6.1996 and he was counted as having the benefit of eight more years of service as Post Graduate Teacher on 22.3.2004. Thus according to the Government calculation he completed Post Graduate Teacher status with effect from

22.3.2004, the dates being 22.3.1989 to 21.3.1991 and again from 10.6.1996 to 22.3.2004, overlooking the gap of about three months by which the Writ Petitioner fell short of ten years.

4. There have been many litigations in regard to teachers involving locals and non-locals and the parties have gone upto the Supreme Court also. On 29.4.1994 an order was passed by the Supreme Court setting aside the order of the Division Bench of the Sikkim High Court <sup>which had -ed</sup> ~~granting~~ <sub>on 29.4.'94,</sub> large-scale benefits to teachers. However, it was pointed out there, <sup>in</sup> regard to Dubey, the same Writ Petitioner who is before us today, that he should be treated at par with the other non-locals and be dealt with on the basis of the 'present rules in vogue'.

5. The 1999 rules have thereafter been promulgated. It is not possible to construe the Supreme Court's order as restraining the hands of the administration even from promulgating any rules.

6. Because of an inadvertent omission, a Government Order dated 28.12.2004 was issued granting advancement grade to the Writ Petitioner from 22.3.1999. This was withdrawn by another Government order dated 21.5.2005 which was set aside <sup>on</sup> <sub>by</sub> a Writ Petition <sup>filed by Dubey</sup> as being contrary to the rules of natural justice. The Writ Petitioner was thereafter given an opportunity of hearing and although he made <sup>a</sup> written representation on 31.07.2005, he failed to appear in person at 11.30 a.m. for personal hearing on 09.09.2005. Before us he submitted that he did not appear because he was given "threats". We find no substance in his submission. He is working and getting pay and there is no 'threat' to him at any time.



**7.** By a Division Bench judgment dated 13.12.1995 certain directions had been given about teachers who had breaks in service like the Writ Petitioner, whose break in service was from 22.3.1991 to 09.06.1996. The judgment clarified that these breaks would not be taken into account for (i) fixation of initial pay in the grade and also (ii) for the purpose of computing pension.

**8.** When the initial pay of the Writ Petitioner was fixed and he was given regularization on 10.6.1996 the five years' break in service was ignored.


**9.** It is submitted that as and when he retires, for the purpose of calculating pensionary benefits, the five years' break will again be ignored.

**10.** By an order of review passed by a Single Judge alone, who delivered the main judgment on 13.12.1995, his Lordship clarified on 23.5.1996 that the break in service would be counted both for withholding of salary for the period during which the teacher did not actually work, and for denying any extra seniority excepting over direct recruits only. These points do not <sup>arise</sup> arise here.

**11.** The Writ Petitioner's grievance is that even for fixing the date of grant of advancement grade the break in service should not be counted.

**12.** This is an absolutely unacceptable claim and demand. The 1999 rules state that 10 years' continuous service as Post Graduate Teacher is necessary for grant of advancement grade. The Writ Petitioner is being given benefit by treating two disjuncted periods of two years and eight years as the required continuous period of 10 years for giving

*ark*




advancement grade. He wants even more. He wants the period, which is not his period of actual service at all, also to be counted for giving advancement grade. According to him the only relevant date should be his first rendering of service as Post Graduate Teacher and thereafter only 10 years is to be added to that date irrespective of whether he rendered any actual service during that period of ten years or not, or whether he even drew any salary during that period or not. This submission is only to be clearly formulated for its rejection. The order of the Hon'ble Supreme Court dated 29.4.1994 nowhere directs extraordinary benefits of the above type to be given to the Writ Petitioner. The Writ Petitioner has been treated absolutely fairly and at par with all the others similarly situated.

**13.** The Writ Petition is dismissed with no order as to costs.



(Ajoy Nath Ray, C.J.)



(N.S. Singh, J.)