

HIGH COURT OF SIKKIM

EDITORIAL BOARD



Hon'ble Shri Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim



Hon'ble Shri Justice S. P. Wangdi, Judge, High Court of Sikkim



Hon'ble Smt. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim

VACANCIES IN COURTS

(i) Vacancies in the High Court of Sikkim as on 30.09.2015

SI.No.	Sanctioned Strength	Working Strength	Vacancies
1.	03	03	00

(ii) Vacancies in the District & Subordinate Courts as on 30.09.2015

SI.No.	Sanctioned Strength	Working Strength	Vacancies
1.	Superior Judicial Service (SSJS) - 10	07	03 01 post of District & Sessions Judge (Spl. Div.-1) and 01 post of District & Sessions Judge (Spl. Div.-II) & 01 post in the cadre of SSJS created (in compliance to the direction passed by the Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India)
2.	Sikkim Judicial Service (SJS) – 08	07	01 01 post of CJM-cum-Civil Judge (South & West)
Total	18	14	04

INSTITUTION, DISPOSAL & PENDENCY OF CASES

(1) Statement of Main & Misc. Cases in the High Court of Sikkim from 01.07.2015 to 30.09.2015.

Sl. No.	Pending as on 30.06.2015		Institution		Disposal		Pending as on 30.09.2015	
	Main Cases	Misc. Appl.	Main Cases	Misc. Appl.	Main Cases	Misc. Appl.	Main Cases	Misc. Appl.
1.	97	54	49	126	55	122	92	58

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.07.2015 to 30.09.2015.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
East District at Gangtok	Main cases	183	69	41	211	583	258	174	667
	Misc. cases	82	77	71	88	24	219	224	19
West District at Gyalshing	Main cases	14	07	04	17	21	40	38	23
	Misc. cases	20	13	15	18	02	85	89	04
North District at Mangang	Main cases	06	03	04	05	20	14	14	20
	Misc. cases	06	06	10	02	00	12	12	00
South District at Namchi	Main cases	37	19	17	39	95	76	80	91
	Misc. cases	30	39	42	27	08	119	123	04
Family Courts	Main cases	102	73	46	129	38	18	29	27
	Misc. cases	01	00	00	01	10	07	04	13
Fast Track Courts	Main cases					05	03	04	04
	Misc. cases					00	02	02	00
Juvenile Justice Boards	Main cases					16	15	12	19
	Misc. cases					00	04	04	00
Total Main Cases		343	158	159	342	712	380	314	778
Total Misc. Cases		131	130	122	139	30	426	412	44

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.07.2015 to 30.09.2015

(i) **East District at Gangtok.**

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
District & Sessions Judge (East)	Main cases	62	43	20	85	70	48	28	90
	Misc. cases	61	72	63	70	06	65	71	00
District & Sessions Judge (Spl. Div.-I)	Main cases	01	01	01	01	00	00	00	00
	Misc. cases	02	00	00	02	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	13	01	05	09	14	00	02	12
	Misc. cases	03	00	01	02	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (East & North)	Main cases	09	02	01	10	309	157	131	335
	Misc. cases	05	00	00	05	09	92	92	09
Civil Judge-cum-Judicial Magistrate (East)	Main cases	98	22	14	106	190	53	13	230
	Misc. cases	11	05	07	09	09	62	61	10
Total Main Cases		183	69	41	211	583	258	174	667
Total Misc. Cases		82	77	71	88	24	219	224	19

(ii) **West District at Gyalshing**

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
District & Sessions Judge (West)	Main cases	10	06	04	12	11	12	09	14
	Misc. cases	18	10	14	14	01	07	08	00
Civil Judge-cum-Judicial Magistrate (West)	Main cases	04	01	00	05	10	28	29	09
	Misc. cases	02	03	01	04	01	78	75	04
Total Main Cases		14	07	04	17	21	40	38	23
Total Misc. Cases		20	13	15	18	02	85	83	04

(iii) North District at Mangan

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
District & Sessions Judge (North)	Main cases	01	00	01	00	02	02	01	03
	Misc. cases	06	05	09	02	00	01	01	00
Civil Judge-cum-Judicial Magistrate (North)	Main cases	05	03	03	05	18	12	13	17
	Misc. cases	00	01	01	00	00	11	11	00
Total Main Cases		06	03	04	05	20	14	14	20
Total Misc. Cases		06	06	10	02	00	12	12	00

(iv) South District at Namchi

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
District & Sessions Judge (South)	Main cases	18	13	12	19	57	17	14	60
	Misc. cases	25	29	34	20	01	19	16	04
Chief Judicial Magistrate-cum-Civil Judge (South & West)	Main cases	00	00	00	00	16	43	45	14
	Misc. cases	02	04	03	03	03	55	58	00
Civil Judge-cum-Judicial Magistrate (South)	Main cases	19	06	05	20	22	16	21	17
	Misc. cases	03	06	05	04	04	45	49	00
Total Main Cases		37	19	17	39	95	76	80	91
Total Misc. Cases		30	39	42	27	08	119	123	04

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(v) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015	Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
Family Court, East at Gangtok	Main cases	73	48	28	93	27	11	19	19
	Misc. cases	01	00	00	01	08	06	03	11
Family Court West at Gyalshing	Main cases	08	09	04	13	01	02	01	02
	Misc. cases	00	00	00	00	00	00	00	00
Family Court North at Mangan	Main cases	00	04	02	02	00	00	00	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court South at Namchi	Main cases	21	12	12	21	10	05	09	06
	Misc. cases	00	00	00	00	02	01	01	02
Total Main Cases		102	73	46	129	38	18	29	27
Total Misc. Cases		01	00	00	01	10	07	04	13

(vi) Fast Track Court

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
Fast Track Court (East & North) at Gangtok	Main cases	02	01	02	01
	Misc. cases	00	01	01	00
Fast Track Court (South & West) at Gyalshing	Main cases	03	02	02	03
	Misc. cases	00	01	01	00
Total Main Cases		05	03	04	04
Total Misc. Cases		00	02	02	00

(vii) Juvenile Justice Boards

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.07.2015	Institution from 01.07.2015 to 30.09.2015	Disposal from 01.07.2015 to 30.09.2015	Pendency at the end of 30.09.2015
Juvenile Justice Board East, at Gangtok	Main cases	10	11	05	16
	Misc. cases	00	03	03	00
Juvenile Justice Board West, at Gyalshing	Main cases	02	00	02	00
	Misc. cases	00	00	00	00
Juvenile Justice Board North, at Mangan	Main cases	01	00	01	00
	Misc. cases	00	00	00	00
Juvenile Justice Board South, at Namchi	Main cases	03	04	04	03
	Misc. cases	00	01	01	00
Total Main Cases		16	15	12	19
Total Misc. Cases		00	04	04	00

SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM

FROM (01.07.2015 to 30.09.2015)

1. **Order of termination based on a finding of misconduct without holding a regular inquiry is unsustainable in law:** On 21/07/2015, a Single Bench of the Court in WP(C) No. 43 of 2014 (Madhav Chettri Vs. State of Sikkim & Ors.) quashed the order of termination of the petitioner appointed as Sub-Inspector in the Sikkim Police from service on the ground of being found in possession of a stolen pistol and live ammunition and held that if the termination is based on a finding of misconduct which is arrived at without holding a regular inquiry, it would be unsustainable in law. Such an order can be passed only after holding a regular enquiry under clause (2) of Article 311 of the Constitution of India after affording him reasonable opportunity of being heard in respect of the charges. It was further held that no doubt, it is a well settled position of law that a criminal case and a departmental proceeding can be held simultaneously against a delinquent employee as those operate in distinct and different jurisdictional areas, if the charge in a departmental case and the charge before the criminal court are one and the same and, if the delinquent later gets an honourable acquittal in the criminal proceeding, he would be entitled to the benefit of the departmental proceedings against him being dropped. The Court further observed that It would have been appropriate for the respondents to have withheld taking the impugned action until completion of the proceedings against the petitioner in respect of the same charges.
2. On 28/07/2015, a Single Bench of the Court in WP (C) No. 7 of 2014 (M.K. Gulati & Ors. Vs. State of Sikkim & Ors.) held that although it is undoubtedly true that courts do not normally interfere in executive decisions of the Government, and the Government decision is presumed to be reasonable and in public interest, yet there has to be a justification for any decision adopted by the Government in as much as such a decision should be shorn of any irrationality, as its validity has to be tested on the touchstone of equality. It is understood that the Court while reviewing any administrative action will not endeavour to substitute its own views, but whether the equality clause of Article 14 has been violated or not has to be closely examined. The Court struck down the classification made by the government in payment of severance packages to the petitioners vis-à-vis the other similarly situated regular employees of the Sikkim Time Corporation as pernicious, mala fide and bereft of any rationale, thereby being violative of Articles 14 and 16 of the Constitution. It was held that the petitioners were in a homogenous class with other employees of SITCO being regular employees and placed in similar pay scales as employees of the SITCO placed in the headquarters notwithstanding their nature of work. As such, it cannot be said that the classification was based on intelligible differentia or that there was a reasonable nexus between the classification and the object sought to be achieved by it.

3. On 12/08/2015, a Single Bench of the Court in RFA No. 15 of 2013 (Smt. Lachungmu Lepcha @ Ano. Vs. Shri Gyatso Lepcha & Ors.) referring to the Notification dated 11/04/1928 in relation to the registration of documents, The Sikkim State Rules Registration of Documents, 1930 and Section 54 of the Transfer of Property Act, 1882, held that the document pertaining to sale of immovable property are necessarily to be registered. While referring to the principles laid down by the Hon'ble Supreme Court in S. Kaladevi Vs. V.R. Somasundaram & Ors., AIR 2010 SC 1654 pertaining to the admission of a document in evidence when it was necessary to be registered but is unregistered, the Court held that such documents cannot be admitted in evidence as proof of sale and ownership, but only for a collateral purpose, i.e. as evidence of an oral agreement of sale, as provided in the proviso to Section 49 of the Registration Act, 1908. The Court held that the reasoning of the trial court that the sale agreement can safely be admitted in evidence for the purpose of identification of the plots and boundary even though the same is an unregistered document appears to be erroneous and contrary to law. Drawing the attention of the Id. Trial court to Order XIII of the CPC, 1908, the Court further held that the court may reject any document if it considers the same to be irrelevant, however, rejection of a document which is inadmissible has to be done only on the objection raised by a party to it and has to be decided by a reasoned order.
4. **Where the plaintiffs omitted to claim a particular relief in an earlier suit in respect of a cause of action, they cannot claim the said relief in the subsequent suit:** On 18/08/2015, a Single Bench of the Court, in CRP No. 01 of 2013 (Mahesh Agarwal Vs. Mudit Agarwal & Ors.) referring to the provisions of Order II Rule 2 of CPC, 1908, held that the requirement of Order II Rule 2 CPC is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of a cause of action. If the cause of action in the subsequent suit was the same as the cause of action in the earlier suit, but the plaintiffs utterly failed to claim the reliefs in the earlier suit, which they are claiming in the subsequent suit, the plaintiffs would be precluded from bringing the subsequent suit to claim the reliefs which they had earlier omitted without obtaining leave of the court. Thus, where the cause of action in the earlier suit filed in the year 1994 was the registration of the Hindu undivided joint family property in the name of 'M/s Shree Mulchand and Sons' being coparcenary property in favour of the defendant No. 1 and the execution of registered gift deed by the defendant No. 1 in respect of the said property in favor of his wife, and the plaintiffs filed the suit claiming reliefs of declaration that the suit properties were joint family properties and/or coparcenary properties of the plaintiffs and the defendants and the gift deed executed by the defendant No. 1 in favour of his wife was void and inoperative in law and not binding upon them, the subsequent suit filed by the plaintiffs in the year 2010 for cancellation of the registration of the same suit property in favour of the wife of defendant No. 1 in respect of the same cause of action is unsustainable. It was held that the plaintiffs having omitted to seek for relief of cancellation in the earlier suit cannot now be allowed to do so in respect of the same cause of action.

SOME RECENT MAJOR EVENTS

1. INDEPENDENCE DAY CELEBRATION



The High Court of Sikkim celebrated the 69th Independence Day on 15th August, 2015. The National Flag was unfurled by Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim. A Cultural Programme was presented by the staff of the High Court of Sikkim, the Bar Association of Sikkim, children from a local NGO and students of Gurukool School, Pakyong East Sikkim.

The occasion was graced by Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim, Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim, Madam Sudha Rani Sinha, Madam T.T. Wangdi, Mr. Roger R. Rai. Also present were Judicial Officers, Senior Advocates, Members of the Bar, Officers & Staff of the Registry and Media persons.



Glimpses of the 69th Independence Day Celebration on 15th August, 2015

IMPORTANT VISITS & CONFERENCES

1. Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim attended the All India Seminar on "Global Legal Education" on 8th August, 2015 organized by the Confederation of Indian Bar in association with the Kalinga Institute of Industrial Technology(KIIT)University, Bhubaneswar at Odisha to deliberate on Global Legal Education.
2. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim State Legal Services Authority and Member, NALSA attended the Sensitization Programme on "Rights of Elderly visa-vis maintenance and Welfare of Parents and Senior Citizens Act, 2007" organized by the Legal Aid Clinic, Department of Law, School of Social Sciences, Sikkim University in collaboration with Sikkim State Legal Services Authority on 5th September, 2015 at the Conference Hall, Barad Sadan, 5th Mile, Tadong, Gangtok.
3. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim visited Chungthang Subdivision, North Sikkim to inspect the land for the proposed Court complex and residential quarters of the Civil Judge -cum -Judicial Magistrate, Chungthang Sub-Division, North Sikkim and for setting up of a temporary establishment for the Sub-divisional Court at Chungthang, North Sikkim on 6th September, 2015.
4. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Chairman, Juvenile Justice Committee attended the 2nd Round of Regional Conference for Strengthening, Restoration and Rehabilitation of Children under Juvenile Justice (Care and Protection of Children) Act, 2000 at Calcutta in collaboration with the Calcutta High Court, UNICEF and Government of West Bengal on 12th & 13th September, 2015 at Kolkata, West Bengal.
5. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Chairman, Steering Committee, High Court of Sikkim attended the Meeting of the Hon'ble Chairperson of the High Court Computer Committees of all the High Courts on 19th and 20th September, 2015 at New Delhi.

PROGRESS MADE IN THE HIGH COURT AND SUBORDINATE COURTS OF SIKKIM UNDER E-COURTS MISSION MODE PROJECT

1. A days training programme on National Core Version CIS 2.0 was conducted at the Sikkim Judicial Academy for the ministerial staff of the High Court and Subordinate Courts of Sikkim on 11th July, 2015 under e-Courts Mission Mode Project.
2. A month long training programme on Ubuntu-Linux 14.04 Operating System customized by e-Committee, Supreme Court of India and Libre Office was imparted at Sikkim Judicial Academy in August, 2015 for the newly appointed Civil Judges-cum-Judicial Magistrates as a part of the 3rd Institutional Training.
3. A one day training programme on installing Linux-Ubuntu 14.04 Operating System customized by e-Committee, Supreme Court of India and other software applications was conducted for the ministerial staff of High Court and Subordinate Courts of Sikkim on 29th September, 2015 under e-Courts Mission Mode Project.

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