



COURT NEWSLETTER

HIGH COURT OF SIKKIM

Golden Jubilee Celebration Year

Vol. 1 Issue No. 3

July-September 2009



EDITORIAL BOARD

Hon'ble Mr. Justice Aftab H. Saikia, Chief Justice, High Court of Sikkim
Hon'ble Mr. Justice A.P. Subba, Judge, High Court of Sikkim

COMPILED BY

Meenakshi M. Rai, Registrar General, High Court of Sikkim

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THE HIGH COURT OF SIKKIM
ROLL OF HONOUR
HON'BLE CHIEF JUSTICES

1.	Hon'ble Mr. Justice Man Mohan Singh Gujral	07.05.1976	14.03.1983
2.	Hon'ble Mr. Justice Mohan Lall Shrimal	17.12.1983	03.01.1985
3.	Hon'ble Mr. Justice Jugal Kishore Mohanty	21.01.1986	04.01.1989
4.	Hon'ble Mr. Justice Braja Nath Misra	20.01.1990	08.11.1992
5.	Hon'ble Mr. Justice Surendra Nath Bhargava	20.01.1993	10.02.1996
6.	Hon'ble Mr. Justice Krishna Murari Agarwal	15.02.1996	26.10.1996
7.	Hon'ble Mr. Justice Kanniappa Arumuga Thanikkachallam	27.08.1997	26.09.1997
8.	Hon'ble Mr. Justice Ripusudan Dayal	03.02.1999	17.05.2003
9.	Hon'ble Mr. Justice Radha Krishna Patra	09.07.2003	23.11.2004
10.	Hon'ble Mr. Justice Binod Kumar Roy	30.09.2005	26.12.2006
11.	Hon'ble Mr. Justice Ajoy Nath Ray	27.01.2007	30.10.2008
12.	Hon'ble Mr. Justice Aftab H. Saikia	07.03.2009	

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THE HIGH COURT OF SIKKIM
ROLL OF HONOUR
HON'BLE PUISNE JUDGES

1. Hon'ble Mr. Justice Rajinder Sachar	16.5.1975	06.05.1976
2. Hon'ble Mr. Justice Anandamoy Bhattacharjee	16.6.1976	21.01.1986
3. Hon'ble Mr. Justice Ripusudan Dayal	10.5.1984	15.10.1995
4. Hon'ble Mr. Justice Anup Deb	16.12.1994	07.02.1995
5. Hon'ble Mr. Justice Malay Sengupta	16.10.1995	09.11.1998
6. Hon'ble Mr. Justice Anup Deb	27.12.1997	12.03.2002
7. Hon'ble Mr. Justice Nongthombam Surjamani Singh	7.1.2003	12.07.2007
8. Hon'ble Mr. Justice Ananda Prakash Subba	4.10.2004	03.04.2007
9. Hon'ble Mr. Justice Ananda Prakash Subba	10.11.2007	
10. Hon'ble Mr. Justice Sonam Phintso Wangdi	23.06.2009	

APPOINTMENT IN THE HIGH COURT

(From 01.07.09 to 30.09.09)

Sl. No.	Name of the High Court	Name of the Hon'ble Judge	Date of Appointment
1.	Sikkim	-	-

VACANCIES IN COURTS**(i) Vacancies in the High Court of Sikkim as on 30.09.2009**

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	03	0

(ii) Vacancies in the District & Subordinate Courts as on 30.09.2009

Sl. No.	Name of the State	Sanctioned Strength	Working Strength	Vacancies
1.	SIKKIM	*15	09	06

* Including 2 Fast Track Courts.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

(1) High Court of Sikkim from 1.7.09 to 30.9.09

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1	62	26	25	63	31	4	10	25	88

(2) District & Subordinate Courts from 1.7.09 to 30.9.09 (East & North) & (South & West)

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	225	59	29	255	863	272	253	882	1137

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	98	103	80	121	39	371	384	26	147

(3) Family Court (East & North) at Gangtok from 1.7.09 To 30.9.09

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	23	28	11	40	13	7	5	15	55

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	0	0	0	0	2	1	1	2	2

(4) Family Court (South & West) at Namchi from 1.7.09 to 30.9.09

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	13	7	5	15	11	4	3	12	27

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.09
	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	Opening Balance as on 1.7.09	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09	
1.	0	0	0	0	2	1	1	2	2

(5) Lok Adalat Cases from 1.7.09 to 30.9.09

Sl. No.	Name of Lok Adalat	Opening Balance	Institution from 1.7.09 to 30.9.09	Disposal from 1.7.09 to 30.9.09	Pendency at the end of 30.9.09
1.	High Court Lok Adalat	40	7	13	34
2.	District Lok Adalat at Gangtok	6	16	11	11
3.	District Lok Adalat at Namchi	23	12	31	4
4.	Taluk Lok Adalats at Ravangla, Gyalshing, Mangan & Soreng	3	82	79	6
	Total	72	117	134	55

SOME RECENT HIGH COURT JUDGMENTS

1. Crl. Rev. P No. 4 of 2009

SURENDRA PRASAD Vs. NIRAJ THAPA & ANO.

Date of Judgment : 03/07/2009

Dismissal of appeal by the Ld. Sessions Judge, South and West at Namchi against the judgment and order of conviction passed by the Chief Judicial Magistrate under Section 16(1) 'A' of The Prevention of Food Adulteration Act, 1954, in the absence of the appellant or his counsel, while reducing the quantum of sentence – Revision Petition filed against the said judgment and order of dismissal – Held, appellate Court is duty bound to hear the appellant or his pleader when the appeal is taken up for disposal on merits – Impugned order passed without hearing the appellant or his counsel is against the judgment of the Apex Court as well as the provisions of the Cr. P.C. as contained in Sections 384 and 386 – Conviction of the petitioner maintained for the period already undergone by him and set aside for the remaining period – Appellant ordered to be released forthwith if not required in any other case.

2. WP(C) No. 31 of 2001

CHHABIL DAS AGGARWAL Vs. UNION OF INDIA & ORS.

Date of Judgment : 15/07/2009

A Writ Petition filed for setting aside a notice under Section 148 of the Income Tax Act, 1961 and an ex-parte order of assessment for the assessment year 1995 – 1996 although the petitioner had already paid tax under Income Tax Manual, 1948 – A Committee was constituted subsequently consisting of the Central & State Government Officials to resolve the difference between the Central and the State Government regarding implementation of tax laws in Sikkim – Section 10 of the Income Tax Act has been amended based on the report of the Committee, incorporating Clause 26AAA, thereby declaring the income arising or accruing to an individual being a Sikkimese as not forming part of total income – Petition closed on withdrawal with liberty to approach the High Court or other competent forum for redressal of any grievances.

3. CRP NO 05 OF 2008

DURGA BAHADUR RAI & ORS. Vs. GOLMAN RAI & ORS.

Date of Order: 27/07/2009

A revision petition against the order of the Ld. District Judge, East & North at Gangtok rejecting the application under Order VII Rule 11 CPC for the dismissal of a title suit as being barred by the law of limitation. – Held, Court is required to pronounce Judgment on all issues under Order XIV Rule 2 CPC, once written statement has been filed and issues framed. No preliminary issue on question of limitation was framed by the Id. trial court, although the point of limitation was framed as one of the several issues – petition dismissed, leaving it open to the petitioners to raise the issue of limitation at the time of final hearing in the Id. trial court.

4. **WP (C) NO.16 OF 2009**
MANORANJAN DIXIT Vs. STATE OF SIKKIM & ORS.
Date of Judgment : 30/07/2009

A writ petition filed for quashing the appointment of eight Post Graduate Teachers as Principals of different Senior Secondary Schools on the basis of an interview – petitioner also took the interview but was unsuccessful – petitioner further prayed for quashing the promotion order of one P.S. Saha from the post of coordinator – Held, none of the eight persons selected as Principals have been impleaded as respondents although they are the necessary parties – petition not maintainable in the absence of all those candidates – promotion of P.S. Saha was never assailed by the petitioner at any point of time who was promoted long back in 2004 – petition has also not been filed under Article 226 but under Articles 14, 15 & 16 – petition dismissed.

5. **CRP NO. 02 OF 2008**
SITA DEVI & ANO.Vs. SHAMSHER PRASAD GUPTA & ORS.
Date of Order: 30/07/2009

A revision petition against the order of the Id. District Judge, South at Namchi rejecting the application of the petitioners for being impleaded as parties in a partition suit – Held, suit properties were admittedly the coparcenary properties of the parties in the suit as well as the petitioners – finding of the trial court as regards locus standi of the petitioners was erroneous as it would emerge only after the parties have appeared in court and adduced evidence – application for addition of party under Order 1 Rule 10 of the CPC may be filed at any stage of the proceedings – rejection of the application will also lead to filing of fresh suit on the same matter leading to multiplicity of proceedings – petition allowed, ordering the petitioners to be impleaded as defendants in the suit.

6. **WP (CRL.) NO.03 OF 2008**
SUNIL DASS RAI Vs. STATE OF SIKKIM & ORS.
Date of Judgment : 30/07/2009

Complaint lodged before SP south, by the Petitioner, who was a minor, alleging detention and brutal assault on him in police custody – SP ordered an inquiry by the SDPO before registering the complaint – Petition filed challenging the said order as being illegal – Held, no illegality or irregularity was committed by the SP in ordering the inquiry – Petitioner never approached the concerned police station for lodging any FIR but went straight to the SP to lodge complaint - SP had acted rightly in ordering preliminary inquiry to satisfy the genuineness or correctness of the allegations – neither the medical report nor the inquiry report indicate any such injury to match with the allegations – Petition dismissed.

7. RFA NO 02 OF 2008

PRAKASH BISTA CHETTRI Vs. RABIN RAI

Date of Judgment : 07/08/2009

An appeal against the dismissal of title suit by the Id District Judge, South & West at Namchi on the ground of failure to discharge the burden of proof by the plaintiff – suit as well as appeal proceeded ex-parte as the defendant did not appear despite notice – Held, if the defendant does not appear or deny the allegations of facts contained in the plaint, the allegations are taken to be admitted as per sub-rule (1) of Rule 5 of Order VIII CPC, resulting in pronouncement of judgment under Sub-Rule (2) – provisions of the Evidence Act regarding proof of documents or their contents would be relevant only when the defendant appears and files written statement denying their existence or authenticity. Deliberate absence of the respondent/defendant in Court undoubtedly gives rise to the adverse presumption that he has nothing to state in defense. Plaintiff should not be made to suffer on account of ineptitude or incompetence of his lawyer – Appeal allowed.

8. RFA NO 01 OF 2009

NEW INDIA ASSURANCE COMPANY LTD. Vs. NAKUL GURUNG & ORS.

Date of Judgment : 24/08/2009

An appeal against the judgment of Ld. Member, MACT, E&N at Gangtok awarding claimants compensation on death – Held, the age of the parents is the determining factor in case the parents are the claimants and considering their age in the present case, the relevant multiplier would be 15 in terms of the second schedule – In claims under Section 166, court shall have to adopt the multiplier system in clause (1) or the fixed compensation under Clause (6) of the second schedule whichever is more beneficial to the claimant – Appeal partly modified correcting the multiplier from 16 to 15 and reducing the rate of interest from 10% to 6% per annum.

9. PIL WP (C) NO.01/2007

SONAM PALDEN BHUTIA Vs. STATE OF SIKKIM & ORS.

Date of Judgment : 28/08/2009

A Writ Petition in the form of PIL against the non-implementation of various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Sikkim Juvenile Justice (Care and Protection of Children) Rules, 2002 – Most of the provisions of the Act have already been implemented by the Government as evident from their reply – Government further directed to constitute Special Juvenile Police Unit as envisaged under Section 63 of the Act preferably within a period of four months for proper and adequate implementation of the provisions of the Act without further delay.

10. CRL.A. NO.01/2008

PANNA LALL GUPTA Vs. STATE OF SIKKIM

Date of Judgment : 02/09/2009

An appeal against the judgment and order of conviction passed by the Id. Sessions Judge (S&W) at Namchi under Section 489B and 489C of the IPC for possession and circulation of counterfeit currency notes – Held, mere possession of the counterfeit currency notes is not sufficient to constitute the offence under Sections 489B and 489C IPC unless such notes are possessed or used by the accused knowing or having reason to believe the same to be forged or counterfeit – statement under Section 313 Cr. P.C. clearly revealed that the accused was not aware that those notes were counterfeit – nothing has been brought on record to show that the appellant had the intention to use the fake notes as genuine – appeal allowed, dismissing the judgment and order of conviction.

11. WP (C) NO. 34 OF 2007

SANTOSH RAI & ORS. Vs. STATE OF SIKKIM & ORS.

Date of Judgment : 09/09/2009

A Writ Petition challenging the order of absorption of 35 Assistant Education Officers who were appointed on deputation by the Department of Human Resource Development, without holding any selection process, by relaxing the terms and conditions contained in the Notification dated 24/06/1997 – Notification contained the rules for limited departmental competitive examination for selection to those posts – Held, the Notification does not contain any provision or clause for relaxation of the terms and conditions contained therein – Relaxation is permissible only if there exists any provision in the Notification – in the absence of statutory Rules framed for recruitment, executive instructions are justiciable and the Government is required to act and rely on every such instruction – no inordinate delay is caused in filing the petition – petition allowed, quashing the impugned order of absorption.

12 CRL. APPEAL NO. 2 OF 2008

MRITYUNJAY KUMAR Vs. STATE OF SIKKIM

Date of Judgment : 09/09/2009

An appeal against the order of conviction under Sections 354/342 IPC by the Id. Sessions Judge, Spl. Div. – I East at Gangtok – Held, Material contradictions in the statement of the victim under section 161 Cr. P. C. and in deposition which does not affect the substance of the prosecution evidence does not vitiate the prosecution case – use of criminal force under Section 354 IPC does not necessarily involve physical force, it may be exhibited even in absence of physical element – evidence of the prosecutrix although of tender age, can be tested if she appears to be intelligent and inspires confidence in the court to test her as a competent witness – proof of actual physical obstruction is not essential to constitute the offence of wrongful confinement, it is the condition of mind of the person confined, as the reasonable apprehension of force, in case of an attempt to escape, which is necessary –

Appeal dismissed and conviction by the trial court upheld – prayer for release on probation of good conduct rejected.

- 13. CRL. APPEAL NO. 02/2006**
RAJU CHETTRI & ANO. Vs. STATE OF SIKKIM.
Date of Judgement: 16/09/2009

An appeal against the order of conviction passed by the Ld. Sessions Judge, Spl.Div. – I E&N at Gangtok U/S 302/348,380/341 IPC – case based purely on circumstantial evidence – Held, appellants have not been able to establish the use of force or coercion by the police in the making of disclosure statements nor was this plea taken in the statements recorded u/s 313 Cr.P.C. – disclosure statements and the discovery of the incriminating articles form a well established link in the chain of circumstances unerringly pointing at the guilt of the appellants – prosecution has been able to establish each of the circumstances appearing against the appellants – statement of the I.O. has not been contradicted in cross examination, thereby drawing a presumption of admission of those statements, which has also been corroborated by the other witnesses – Appeal dismissed.

- 14. CRL. A. NO. 03/2007**
STATE OF SIKKIM. Vs. RAJU CHETTRI & ANO.
Date of Judgement: 16/09/2009

An appeal filed by the State of Sikkim for enhancement of sentence of rigorous imprisonment for life passed by the Ld. Sessions Judge, East & North at Gangtok against the respondents / convicts for offences under Sections 302/34 IPC to death sentence-Held, convicts are not beyond redemption and they can still transform themselves from the dredges of the past into good human beings, which is not possible if death sentence is imposed, as death is irreversible - Appeal dismissed

- 15. WP (C) NO.10/2007**
ADUPTSHERING BHUTIA Vs. STATE OF SIKKIM & ORS.
Date of Judgement: 27/09/2009

A Writ Petition challenging a Notification showing the inter- se seniority list of Police Inspectors placing the petitioner in Officiating capacity instead of placing him in confirmed status – During the pendency of the petition the Government had filed a notification withdrawing the said list with immediate effect, declaring the same as only a combined list, and further proposing to issue a provisional seniority list after affording opportunities to all the members of the cadre to file their respective claims and objections – Petition disposed of as being infructuous with liberty given to the petitioner to approach the High Court for redressal of grievances, if any, after publication of final seniority list.

MAJOR DEVELOPMENTS & EVENTS

Cultural Programme (19th July, 2009) coinciding with the Golden Jubilee Celebration Year (April 17, 2009- April 16, 2009)

The Golden Jubilee Celebration Committee of the High Court of Sikkim organized a Cultural Programme at Sikkim Government College auditorium as part of the ongoing Golden Jubilee Celebration Year which commenced from 17th April, 2009.

Dignitaries Being Welcomed On The Occasion



Hon'ble Mr. Justice Aftab H. Saikia, Chief Justice



Hon'ble Speaker Mr. K.T. Gyaltzen



Hon'ble Mr. Justice A.P. Subba, Judge



Hon'ble Mr. Justice S.P. Wangdi, Judge

The Speaker of the State Legislative Assembly, Mr. K. T. Gyaltzen graced the occasion as the Chief Guest while Hon'ble the Chief Justice, Mr. Justice Aftab H. Saikia, Hon'ble Judge, Mr. Justice A. P. Subba, Hon'ble Judge, Mr. Justice S. P. Wangdi along with the Judicial Officers of the District and Subordinate Courts, Dignitaries of the State Government Departments were present on the occasion.

The Bar Members, Officers and staff of the High Court as well as the Subordinate Courts participated in this colourful event. Earlier while making his welcome address, Mr. K. T. Bhutia, Sr. Advocate and Incharge, Cultural Committee said that the celebration of the Golden Jubilee Celebration Year would be observed throughout the year through various activities.

*Glimpses of the Cultural Programme held on 19th July '09
coinciding with the Golden Jubilee Celebration Year of the
High Court of Sikkim*



Independence Day Celebration (15.08.09)

The High Court of Sikkim observed the 62nd Independence Day in its premises. The occasion was graced by Hon'ble Judge, Mr. Justice A.P. Subba and Hon'ble Judge, Mr. Justice S.P. Wangdi. The Judicial Officers of the District Court, Officers and Staff of the Registry were also present.



Hon'ble Mr. Justice A.P. Subba, hoisted the National Flag which was followed by the National Anthem and an Arms Drill performance by the Sikkim Police attached to the High Court.

*Meeting of the Hon'ble Chief Justice & Hon'ble Judge
with Her Excellency the President of India, on 7th August, 2009
to extend an invitation to the closing ceremony
of the Golden Jubilee Celebration Year*



FORMATION OF THE SIKKIM CHAPTER OF THE INDIAN LAW INSTITUTE

The Sikkim Chapter as the Sikkim State Unit of the Indian Law Institute was formed at Gangtok on August 7, 2009. The Executive Council of the Sikkim Chapter was also constituted comprising of the following members: -

Hon'ble Mr. Justice Aftab H. Saikia, Chief Justice, High Court of Sikkim Ex-Officio President
Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim. Executive Chairman
Mr. Tashi Wangdi Bhutia, District & Sessions Judge, East & North at Gangtok. Secretary
Mr. A.K. Upadhyaya, Senior Advocate. Treasurer
Dr. S.W. Lepcha, District & Sessions Judge, South & West at Namchi Member Executive Council
Mrs. Meenakshi M. Rai, Registrar General, High Court of Sikkim	- do -
Mrs. K.C. Barphungpa, Registrar, High Court of Sikkim	- do -
Mrs. Lakchung Sherpa, Chief Judicial Magistrate-cum- Civil Judge, East & North at Gangtok	- do -
Mr. Prajwal Khatiwada, Chief Judicial Magistrate-cum- Civil Judge, South & West at Namchi	- do -
Mr. T.B. Thapa, Senior Advocate	- do -
Mr. B.R. Pradhan, Senior Advocate	- do -
Mr. B. Sharma, Senior Advocate	- do -
Mr. S.S. Hamal, Advocate	- do -

14. Mr. D.R. Thapa,
Advocate Member Executive Council
15. Mr. Karma Thinley,
Advocate - do -

At the first meeting of the Executive Committee of the Sikkim Chapter held in the High Court premises on September 2, 2009, Hon'ble the Chief Justice Aftab H. Saikia as the Ex-officio President of the Sikkim Chapter, Indian Law Institute informed the meeting that vide a letter dated 19.08.2009 Prof. D.S. Sengar, Director, Indian Law Institute, New Delhi had communicated to His Lordship that Hon'ble the Chief Justice of India, Mr. Justice K.G. Balakrishnan had accorded recognition to the Sikkim Chapter of the Indian Law Institute.



Meeting of the Sikkim Chapter of the Indian Law Institute

*Hon'ble the Chief Justice, Mr. Justice Aftab H. Saikia
was invited at N.E.F. Law College, Guwahati,
for inauguration of Moot Court Hall
on 4th September 2009.*



Hon'ble the Chief Justice, Mr. Justice Aftab H. Saikia at the Department of Law, Gauhati University on a tree plantation drive at the campus on Teachers' Day.



Hon'ble the Chief Justice, Mr. Justice Aftab H. Saikia addressing the teachers and students of Department of Law on the invitation of the students of the Department of Law, in the presence of the Vice Chancellor of Gauhati University, Professor O.K. Medhi; Professor Neeru Hazarika Political Science Department and Dr. B.K. Chakraborti, Head of Department of Law



CORRIGENDUM

In Vol. 1 Issue No. 2 of the quarterly "Court Newsletter" at page No. 29, under the heading "New Developments" please read "7(c)" instead of "10(c)" under Rule 7 of "The High Court of Sikkim Designation of Senior Advocates Rules, 2009".

IMPORTANT VISITS & CONFERENCES

The Hon'ble Chief Justice, Mr. Justice Aftab H. Saikia attended the Chief Justices' Conference 2009 held on 14 & 15 August 2009 in Supreme Court of India, New Delhi along with the Registrar General, Mrs. Meenakshi M. Rai.

**RULES
&
NOTIFICATIONS**

SIKKIM



GOVERNMENT

GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok, Thursday, 25th November, 1999

No. 283

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK.

No. 88/HOME/99

Dated: 24/11/1999

NOTIFICATION

Whereas the High Court of Sikkim has vide its letter No. 4436/HCS dated 01.11.1999 drawn the attention of the State Government to the Resolutions passed in the Chief Justices' Conference held on 28th and 29th November, 1997 at New Delhi;

And whereas in the Chief Justices' Conference it was resolved that medical facilities which are available to sitting Judges of the High Court be extended to retired Judges of the High Courts and Supreme Court of India;

And whereas no separate rules for provision of medical facilities have been framed for the retired Judges of the High Court of Sikkim due to the limited resources of the State of Sikkim;

And whereas it is now considered expedient to frame rules providing for medical entitlement of the retired Judges of the High Court of Sikkim;

Now, therefore, in exercise of powers conferred under the provisions of section 23 D (2) of the High Court Judges (Conditions of Service) Act, 1954, the State Government, in consultation with the High Court of Sikkim, hereby makes the following rules:-

- Title and Commencement:**
1. These Rules may be called Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families Rules, 1999.
 2. These Rules shall come into force from the date of publication of the Notification in the Official Gazette.
- Definition:**
3. A retired Judge of the High Court of Sikkim, for the purpose of these Rules, shall mean a Judge who was or is initially appointed as Judge **or on transfer as a Judge or appointed as a Chief Justice** of the High Court of Sikkim and who retires after the commencement of these rules either as

Judge or as Chief Justice of any High Court or as Judge or Chief Justice of the Supreme Court.

Entitlements:

- 4.(i) A retired Judge and his family shall be entitled to the same medical benefits as are applicable to a sitting Judge of the High Court of Sikkim and his family under rules and orders issued by the Government of Sikkim and as amended from time to time.
 - (ii) A retired Judge shall be entitled to take medical treatment in any Hospital/Nursing Home in the country on the basis of a referral by the District Medical Officer or Sub-Divisional Officer or a Doctor having M.D. degree who has been a medical practitioner for more than ten years in the place of stay of a retired Judge or the place where the need for medical treatment arises.
 - ²(iii) In case a Judge pre-deceases his or her spouse before or after his or her retirement, the facility specified in sub-rule (ii) above shall be made available to the spouse and his or her family during his or her life time.
 - ³(iv) Where, however, a retired Judge has been re-employed, the provisions of these Rules shall not apply during the period the Judge receives, or is entitled to receive, any emolument or benefits by virtue of such re-employment.
 - ⁴(v) A retired Judge and his family shall be entitled to the assistance of a Liaison Officer for medical treatment and transport for medical treatment at Gangtok, Delhi and Calcutta where the State Government has its establishment.
5. Reimbursement in respect of the entitlements as per Rule 4 shall be made by the High Court of Sikkim. For this purpose the State Government shall provide adequate funds to the High Court under the salaries head.

By Order,

Sd/-
(A.K. JAIN IAS)
Additional Secretary,
Home Department.
F. NO. GOS/HOME-II/TEMP/99/184

¹Inserted vide Notification No. 5/Home/2004 dated 08/01/2004 (Annexure -A)

²Inserted vide Notification No. 17/HOME/2002 dated 22/5/2002. (Annexure -B)

³Substituted vide Notification No. 51/HOME/2008 dated 07/06/2008.(Annexure -C)

⁴Inserted vide Notification No.150/GEN/DOP dated 2/3/2009.(Annexure -D)

ANNEXURE -A



GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

5/HOME/2004

Dated 09.01.2004

NOTIFICATION

Whereas, the High Court of Sikkim vide its letter No.V(105)Confdl/HCS/3393 dated 3/11/2003 has desired to amend the Medical Facilities for Retired Judges of the High Court of Sikkim and their Families Rules, 1999 ;

Now, therefore, in exercise of the powers conferred by section 23 D(2) of the High Court Judges (Conditions of Service), Act, 1954, the State Government in consultation with the High Court of Sikkim hereby makes the following rules further to amend the Medical Facilities for the Retired Judges of the High Court of Sikkim and their families Rules, 1999, namely :-

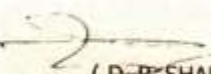
- | | |
|------------------------------|--|
| Short title and Commencement | 1.(1) These rules may be called the Medical Facilities for the Retired Judges of High Court of Sikkim and their Families (Amendment) Rules, 2003. |
| | (2) They shall come into force at once. |
| Amendment of Rule 3. | 2. In the Medical Facilities for the Retired Judges of High Court of Sikkim and their Families Rules, 1999, in rule 3, After the word "as Judge" and before the words "of the High Court of Sikkim", the words "or on transfer as a Judge or appointed as a Chief Justice", shall be inserted. |

BY ORDER

Sd/-
(S. W. TENZING)IAS
CHIEF SECRETARY
FILE No.GOS/HOME-II/TEMP/99/183

Copy to:-

1. Registrar General, High Court of Sikkim
2. Commr-cum-Secretary to Governor.
3. Principal Secretary to Chief Minister
4. Principal Secretary, Finance
5. Secretary, Law
6. Secretary, Health and Family Welfare
7. Secretary, Department of Personnel, AR and TRG.
8. Director, Printing for publication in the official gazette.
9. File and guard file


(D.P. SHARMA)
ADDITIONAL SECRETARY, HOME



GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

No. 17/HOME/2002.

Dated 22.05.2002.

NOTIFICATION

In exercise of the powers conferred by sub-section (2) of section 23D of the High Court Judges (Conditions of Service) Act, 1954, the State Government in consultation with the High Court of Sikkim, hereby makes the following rules to amend the Medical Facilities for the retired Judges of the High Court of Sikkim and their Families Rules, 1999, namely:-

*Short title and
Commencement*

1. (1) These rules may be called the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families (Amendment) Rules, 2002.

- (2) They shall be deemed to have come into force on the 24th day of November, 1999.

*Amendment of
rule 4*

2. In the Medical Facilities For the Retired Judges of the High Court of Sikkim and their Families Rules, 1999 in rule 4, -

- (1) after sub-rule (ii) the following sub-rule shall be inserted, namely:-

“(iii) In case a Judge pre-deceases his or her spouse before or after his or her retirement, the facility specified in sub-rule (ii) above shall be made available to the spouse and his or her family during his or her life time.

- (2) sub-rule (iii) shall be remembered as sub-rule (iv).”

Sd/-

S.W. TENZING

CHIEF SECRETARY/HOME SECRETARY



**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No. 51/Home/2008

Dated: 07/06/2008

NOTIFICATION

The State Government in consultation with the High Court of Sikkim, hereby makes the following rules to amend the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families Rules, 1999, namely -

Short title and commencement

1. (1) These rules may be called the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families (Amendment) Rules, 2008.

(2) They shall come into force at once.

Amendment of Rule 4

2. In the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families Rules, 1999, for the existing sub-rule (iv) of rule (4), the following shall be substituted, namely: -

(iv) "Where, however a retired Judge has been re-employed, the provisions of these Rules shall not apply during the period the Judge receives, or is entitled to receive, any emolument or benefits by virtue of such re-employment."

BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-
(N. D CHINGAPA) IAS
CHIEF SECRETARY

File No. Home/Confdl/116/1999/02

Copy to:

1. Registrar General, High Court of Sikkim.
2. Secretary to the Hon'ble Chief Minister of Sikkim.
3. Principal Secretary, Finance, Government of Sikkim.
4. Principal Secretary, Department of Personnel and Administrative Reforms & Training, Government of Sikkim.
5. Office of the Advocate General, Government of Sikkim.
6. Gazette section for publication in the official gazette.
7. File & Guard File.

(ROSHINI RAI)
DEPUTY SECRETARY - (C) I/HOME




GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL ADM. REFORMS, TRAINING, PUBLIC GRIEVANCES,
CAREER OPTIONS AND EMPLOYMENT SKILL DEVELOPMENT AND CHIEF
MINISTER'S SELF EMPLOYMENT SCHEME
GANGTOK - 737101

No. 150 /GEN/DOPDATED: 2.5.09**NOTIFICATION**

In exercise of the powers conferred by sub-section (2) of section 23D of the High Court Judges (Conditions of Service) Act, 1954, the State Government in consultation with the High Court of Sikkim, hereby makes the following rules further to amend the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families Rules, 1999, namely:-

- | | |
|-------------------------------|--|
| Short title and commencement: | 1.(1) These rules may be called the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families (Amendment) Rules, 2009. |
| Amendment of rule 4: | <p>(2) They shall come into force at once.</p> <p>2. In the Medical Facilities for the Retired Judges of the High Court of Sikkim and their Families Rules, 1999, in rule 4, after sub-rule (iv), the following sub-rule shall be inserted, namely:-</p> <p>"(v) A retired Judge and his family shall be entitled to the assistance of a Liaison Officer for medical treatment and transport for medical treatment at Gangtok, Delhi and Calcutta where the State Government has its Establishment".</p> |

BY ORDER AND IN THE NAME OF THE GOVERNOR.


SPECIAL SECRETARY TO THE GOVERNMENT OF SIKKIM,
DEPARTMENT OF PERSONNEL ADM. REFORMS, TRAINING,
PUBLIC GRIEVANCES, CAREER OPTIONS AND EMPLOYMENT
SKILL DEVELOPMENT AND CHIEF MINISTER'S SELF
EMPLOYMENT SCHEME
File No. F (1)/GEN/DOP

Memo No. 881-83 /GEN/DOP DATED: 2.5.09

Copy for information to:-

1. Registrar, High Court of Sikkim
2. Principal Secretary, Home Department
3. Special Secretary, Home Department for publication in the Gazette
4. File and
5. Guard file

SIKKIM



GOVERNMENT

GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok, Thursday, 25th November, 1999

No. 284

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK.

No. 89/HOME/99

Dated: 24/11/1999

NOTIFICATION

Whereas the High Court of Sikkim has vide its letter No. 4436/HCS dated 1.11.99 drawn the attention of the State Government to the Resolutions passed in the Chief Justices' Conference held on 28th and 29th November, 1997 at New Delhi;

And whereas in the Chief Justices' Conference it was resolved that secretarial assistance and domestic help be made available to retired Judges of the High Courts and Supreme Court of India;

And whereas in pursuance of the said resolution it is considered expedient to make such assistance available to the retired Judges;

Now therefore, the State Government in consultation with the High Court of Sikkim, hereby makes the following rules:-

- Title and Commencement:**
1. These Rules may be called Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999.
 2. These Rules shall come into force from the date of publication of the Notification in the Official Gazette.
- Definition:**
3. A retired Judge of the High Court of Sikkim, for the purpose of these Rules, shall mean a judge who was or is initially appointed as a Judge **or on transfer as a Judge or appointed as a Chief Justice** of the High Court of Sikkim and who retires after the commencement of these rules either as Judge or as Chief Justice of any High Court or as Judge or Chief Justice of the Supreme Court.
- Entitlements:**
- ²4 (1) A retired Judge of the High Court of Sikkim shall be entitled to the service of stenographer (Grade-II) in the employment of the High Court of Sikkim:
Provided that a Retired Judge, in lieu of service of a

Stenographer (Grade-II), may get Rs.9000/- if he was Chief Justice and Rs.6000/- otherwise per month to enable him to get secretarial service of any private Stenographer.

- (2) A Retired Judge of the High Court of Sikkim shall also be entitled to a Residential Orderly (Sevak/Cook) in the employment of the High Court of Sikkim. In case of Judge pre-deceases his or her spouse before or after his or her retirement, this facility shall be available to the spouse and his or her family during his or her life time:
 Provided that a Judge or his her spouse, as the case may be, in lieu of the service of a Residential Orderly (Sevak/Cook) may opt to receive Rs.6000/- if he was Chief Justice and Rs.4000/- otherwise per month to enable him or her to get the service of Private Residential Orderly (Sevak/Cook).
- ³(3) Where, however, a retired Judge has been re-employed, the provisions of these Rules shall not apply during the period the Judge receives, or is entitled to receive, any emolument or benefits by virtue of such re-employment.
- ⁴(4) A retired Judge shall be entitled to transport to the extent of 1000 Kms. in a month on payment of Rs.5/- per kilometer at Gangtok, Delhi and Calcutta where the State Government has its Establishments. The distance shall be calculated from and to the place of stay of the retired Judge.
5. Reimbursement in respect of the entitlements as per Rule 4 shall be made by the High Court of Sikkim. For this purpose the State Government shall provide adequate funds to the High Court under the salaries head.

By Order,

Sd/-
 (A.K. JAIN IAS)
 Additional Secretary,
 Home Department.
 F. NO. GOS/HOME-II/TEMP/99/183

¹ Inserted vide Notification No. 4/HOME/2004 dated 08/01/2004. (Annexure -E)

² Substituted vide Notification No. 71/HOME/2007 dated 07/08/2007. (Annexure -F)

³ Substituted vide Notification No. 50/HOME/2008 dated 07/06/2008. (Annexure -G)

⁴ Inserted vide Notification No. 151/GEN/DOP dated 02/03/2009. (Annexure -H)



GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

No. 4/HOME/2004

Dated...08.01.2004..

NOTIFICATION

Whereas, the High Court of Sikkim vide its letter No.V(105)Confdl/HCS/3393 dated 3/11/2003 has desired to amend the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999 ;

Now, therefore, the State Government in consultation with the High Court of Sikkim hereby makes the following rules further to amend the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, namely :-

- | | |
|------------------------------|---|
| Short title and Commencement | 1.(1) These rules may be called the Retired Judges' Secretarial Assistance and Domestic Help (Amendment) Rules, 2003.

(2) They shall come into force at once. |
| Amendment of rule 3 | 2. In the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, in rule 3, after the word "as Judge" and before the words " of the High Court of Sikkim", the words "or on transfer as a Judge or appointed as a Chief Justice", shall be inserted. |

BY ORDER

Sd/-

(S. W. TENZING)IAS
CHIEF SECRETARY

FILE No.GOS/HOME-II/TEMP/99/183

Copy to:-

1. Registrar General, High Court of Sikkim
2. Commr-cum-Secretary to Governor.
3. Principal Secretary to Chief Minister
4. Principal Secretary, Finance
5. Secretary, Law
6. Secretary, Department of Personnel, AR and TRG.
7. Director, Printing for publication in the official gazette.
8. File and guard file

(D. P. SHARMA)
ADDITIONAL SECRETARY, HOME



No: 71 / Home/2007

Dated: 07/08/2007

NOTIFICATION

The State Government in consultation with the High Court of Sikkim, hereby makes the following rules to amend the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, namely: -

- | | |
|------------------------------|---|
| Short title and commencement | 1. (1) These rules may be called the Retired Judges Secretarial Assistance and Domestic Help (Amendment) Rules, 2007. |
| | (2) They shall come into force at once. |
| Amendment of Rule 4 | 2. In the Retired Judges Secretarial Assistance and Domestic Help Rules, 1999 for the existing Rule 4, the following shall be substituted, namely: - |
| Entitlements: | "4(1) A Retired Judge of the High Court of Sikkim shall be entitled to the service of stenographer (Grade- II) in the employment of the high court of Sikkim:

Provided that a Retired Judge, in lieu of service of a Stenographer (Grade-II), may get Rs 9000/- if he was Chief Justice and Rs.6000/- otherwise per month to enable him to get secretarial service of any private Stenographer. |
| | (2) A Retired Judge of the High Court of Sikkim shall also be entitled to a Residential Orderly (Sevak/Cook) in the employment of the High Court of Sikkim. In case of Judge pre-deceases his or her spouse before or after his or her retirement, this facility shall be available to the spouse and his or her family during his or her life time:

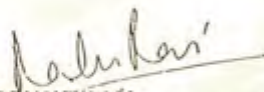
Provided that a Judge or his her spouse, as the case may be, in lieu of the service of a Residential Orderly (Sevak/Cook) may opt to receive Rs.6000/- if he was Chief Justice and Rs.4000/- otherwise per month to enable him or her to get the service of Private Residential Orderly (Sevak/Cook). |
| | (3) Where, however, a Retired Judge has been re-employed or has joined profession, the provisions of these rules shall not apply. |
| | (4) This Notification No. 16/Home/2002 dated 08/05/2002". |

BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-
(H. D. CHINGAPA) IAS
CHIEF SECRETARY
E. NO. 602/Home-II/Temp/09/183

Copy to:

1. Registrar General, High Court of Sikkim.
2. Principal Secretary to His Excellency the Governor of Sikkim.
3. Secretary to the Hon'ble Chief Minister of Sikkim.
4. Principal Secretary, Finance, Government of Sikkim.
5. Principal secretary Department of Personnel and Administrative Reforms and Training, Government of Sikkim.
6. Secretary, Law Department, Government of Sikkim.
7. Office of the Advocate General of Sikkim.
8. Gazette Section for publication in the gazette.
9. File and Guard file.


(ROSHINI RAI)
DEPUTY SECRETARY- (C) I/HOMI

ANNEXURE - G

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No. 50/Home/2008

Dated: 07/06/2008

NOTIFICATION

The State Government in consultation with the High Court of Sikkim, hereby makes the following rules to amend the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, namely:-

Short title and commencement

1. (1) These rules may be called the Retired Judges' Secretarial Assistance and Domestic Help (Amendment) Rules, 2008.

(2) They shall come into force at once.

Amendment of Rule 4

2. In the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, for the existing sub-rule (3) of Rule 4, the following shall be substituted, namely:-

(3) "Where, however a retired Judge has been re-employed, the provisions of these Rules shall not apply during the period the Judge receives, or is entitled to receive, any emolument or benefits by virtue of such re-employment,".

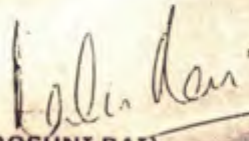
BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-
(N. D CHINGAPA) IAS
CHIEF SECRETARY

File No. Home/Confdl/116/1999/02

Copy to:

1. Registrar General, High Court of Sikkim.
2. Secretary to the Hon'ble Chief Minister of Sikkim.
3. Principal Secretary, Finance, Government of Sikkim,
4. Principal Secretary, Department of Personnel and Administrative Reforms & Training, Government of Sikkim.
5. Office of the Advocate General, Government of Sikkim.
6. Gazette section for publication in the official gazette.
7. File & Guard File


(ROSHNI RAI)
DEPUTY SECRETARY-I (C)/HOME



GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL ADM. REFORMS, TRAINING, PUBLIC GRIEVANCES,
CAREER OPTIONS AND EMPLOYMENT SKILL DEVELOPMENT AND CHIEF
MINISTER'S SELF EMPLOYMENT SCHEME
GANGTOK - 737101

No. 151 /GEN/DOP

DATED: 2.3.09

NOTIFICATION

The State Government in consultation with the High Court of Sikkim, hereby makes the following rules further to amend the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, namely:-

- | | |
|------------------------------|---|
| Short title and commencement | 1. (1) These rules may be called the Retired Judges' Secretarial Assistance and Domestic Help (Amendment) Rules, 2009.
(2) They shall come into force at once. |
| Amendment of rule 4. | 2. In the Retired Judges' Secretarial Assistance and Domestic Help Rules, 1999, in rule 4, after sub-rule (3), the following sub-rule shall be inserted, namely:-
“(4) A retired Judge shall be entitled to transport to the extent of 1000 Kms. in a month on payment of Rs.5/- per kilometer at Gangtok, Delhi and Calcutta where the State Government has its Establishments. The distance shall be calculated from and to the place of stay of the retired Judge”. |

BY ORDER AND IN THE NAME OF THE GOVERNOR.

SPECIAL SECRETARY TO THE GOVERNMENT OF SIKKIM,
 DEPARTMENT OF PERSONNEL ADM. REFORMS, TRAINING,
 PUBLIC GRIEVANCES, CAREER OPTIONS AND EMPLOYMENT
 SKILL DEVELOPMENT AND CHIEF MINISTER'S SELF
EMPLOYMENT SCHEME
File No. F (1)/GEN/DOP

Memo No. 884-87 /GEN/DOP

DATED: 2.3.09

Copy for information to:-

1. Registrar, High Court of Sikkim
2. Principal Secretary, Home Department
3. Special Secretary, Home Department for publication in the Gazette
4. File and
5. Guard file

LIST OF SIKKIM HIGH COURT JUDGES

(As on 30.09.2009)

Sl. No.	Name of the Hon'ble Judge	Date of Appointment
1.	Hon'ble Mr. Justice Aftab H. Saikia	07.03.2009 (As Chief Justice)
2.	Hon'ble Mr. Justice A. P. Subba	04.10.2004
3.	Hon'ble Mr. Justice Sonam Phintso Wangdi	23.06.2009