

WP(C) No. 02/2019

TARA PRASAD SHARMA

PETITIONER (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

Date: 24/06/2020**CORAM :****HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.**

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In the Writ Petition, the petitioner has filed an application, registered as I.A No.05 of 2019, praying for leave to amend the Writ Petition under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. Heard Mr. Tara Prasad Sharma, petitioner-in-person. Also heard Dr. Doma T. Bhutia, learned Additional Advocate General, Sikkim appearing for respondents no. 1 and 2 and Mr. A. Moulik, learned Senior Counsel appearing for respondent no. 3 and Mr. Thupden G. Bhutia, learned counsel appearing for respondent no. 4.

3. Dr. Bhutia submits that the matter in controversy does not relate to the State and, therefore, she will not make any submission on I.A No.05 of 2019.

4. Respondent No.4 had filed a counter affidavit to this application. Though no objection had been filed by the respondent no. 3, Mr. Moulik opposes the application with regard to paragraphs 10A and 50A, grounds (xxi) and (xxii) and prayer (c)(i)(a) which are sought to be added by way of amendment to the Writ Petition. He, however, does not oppose insertion of paragraph 53A after paragraph 53 by way of amendment.

5. In the Writ Petition, the petitioner had, amongst others, prayed for quashing and/or setting aside the order of appointment of respondent no. 4 in place of the petitioner as Civil Judge-cum-Judicial Magistrate (Grade-III) under Sikkim Judicial Service and for issuing an order annulling the resolution adopted on 11.08.2018 withdrawing a recommendation issued earlier for appointment of the petitioner in the post of Civil Judge-cum-Judicial Magistrate. The petitioner had also prayed for a direction for making a fresh resolution restoring the resolution dated 05.07.2017 recommending him for appointment in the post of Civil Judge-cum-Judicial Magistrate (Grade-III) by providing all the consequential benefits including the restoration of his seniority as per the merit list and for a direction to appoint him in the post of Civil Judge-cum-Judicial Magistrate (Grade-III) under Sikkim Judicial Service.

6. At the very outset, it will be appropriate to take note of paragraphs 10A, 50A, 53A, grounds (xxi) and (xxii) and prayer (c)(i)(a), which the petitioner wants to incorporate by way of amendment. As such, paragraphs 3, 4, 5, 6 and 7 of the application for amendment are extracted herein below:-

"3. That following paragraph may kindly be permitted to be added after paragraph No.10 in the instant writ petition.

10A. *That vide O.O.No 547/GEN/DOP dated 10.01.2019; the petitioner has been promoted to the post of Upper Division Clerk and posted at Tourism Information Centre, Pelling, West Sikkim under Tourism and Civil Aviation Department, Government of Sikkim by respondent No 2. At the time of filing the present writ petition the petitioner was working in the capacity of Lower Division Clerk.*

*The copy of the said promotion order has been annexed herewith and marked as **Annexure 8A**.*

4. *That following paragraph may also kindly be permitted to be added after paragraph No.50 in the instant writ petition.*

50A. *That the appointment of the Respondent No.4 in the post of Civil Judge-cum-Judicial Magistrate in the cadre of Sikkim Judicial Service, who is a Non Sikkimese National is illegal and contrary to the Rule 4 (4) of the Sikkim Government Establishment Rules, 1974 in as much as the said rule has been protected by clause (k) and (I) of the Article 371 F of the Constitution of India which has further been reinforced by Hon'ble Supreme Court of India in State of Sikkim versus Surendra Prasad Sharma and others AIR 1994 SC 2342. It is to submit that the petitioner was of the impression that the respondent No.4 is a Sikkimese National and has been temporarily residing at West Bengal. However, recently the petitioner learnt that the Respondent No.4 is the permanent resident of West Bengal and as such his appointment is illegal and contrary to Rule 4(4) of the Sikkim Government Establishment Rule, 1974.*

5. *That, further the following paragraph may also kindly be permitted to be added after paragraph No.53 in the instant writ petition.*

53A. *That the petitioner has suffered a great mental agony due to his non appointment in the said post and shall not be able to file the writ challenging his non*

appointment in the aforesaid post immediately at the relevant time basically due to the reason that the lawyers practicing at Sikkim were reluctant to represent the petitioner in the case, as one of the respondent is the Hon'ble High Court of Sikkim itself. They suggested the petitioner to approach and engage the lawyers from outside the state to which the petitioner could not afford. Secondly the wife of the petitioner was pregnant at the relevant time and the petitioner was required to take care of her and his school going minor child aged 6 (six) years. The petitioner having find no alternative has to file the present writ petition in person with his theoretical knowledge of law as he has never practiced law in the court of law.

6. *That in the light of the averment in para 3, 4 and 5 above, the following grounds after grounds (xx) may kindly be permitted to be added in the writ petition.*

xxi. *For that it is due to his good antecedents and the character the petitioner has been promoted to the next higher grade by the respondent No.2.*

xxii. *For that the appointment of the respondent No.4 in the post of Civil Judge-cum-Judicial Magistrate is illegal and contrary to Rule 4 (4) of the Sikkim Government Establishment Rule, 1974 and liable to be struck down.*

7. *That consequently, the following may kindly be permitted to be added immediately after prayer (c) (i) as prayer (c) (i) (a) in the writ petition.*

(c)(i)(a) *quash and/or set aside the order of appointment of the respondent No.4 being illegal and contrary to Rule 4 (4) of the Sikkim Government Establishment Rules, 1974."*

7. Mr. Sharma submits that for proper adjudication of the Writ Petition, the amendments sought for in the application may be allowed. It is submitted by him that respondent no.4 is a non-Sikkimese National and not a permanent resident in the State of Sikkim and, therefore, his appointment is contrary to Rule 4(4) of the Sikkim Government Establishment Rules, 1974. The aforesaid aspect goes to the root of the matter and, therefore, paragraph 50A as well as corresponding grounds and prayer made on the basis thereof are necessary to be incorporated in the Writ Petition by way of amendment for ends of justice, he submits. He has also submitted that his promotion as Upper Division Assistant in the Office of Tourism and Civil Aviation Department is relevant as it is only because of his good antecedent and character he was so promoted. His contention is that same has relevance in view of the fact that his recommendation was withdrawn on alleged adverse antecedent. Mr. Sharma submits that by way of insertion of paragraph 53A, he is seeking to explain the delay in approaching the Court. He submits that under compelling circumstances, he had to file the Writ Petition in person and therefore, unless paragraph 53A is allowed to be incorporated, he may be prejudiced.

8. Mr. Moulik submits that the allegations made in paragraph 50A, which is sought to be inserted, that the respondent no. 4 is a non-Sikkimese National and that he is not a permanent resident in the State of Sikkim, have no relevance. The employment notice pursuant to which the petitioner and the respondent no.4 responded had laid

down eligibility conditions. There was no condition restricting eligibility only to permanent residents of Sikkim or to Sikkimese National. He has further submitted that Sikkim Judicial Service Rules, 1975 also does not lay down any eligibility criteria for recruitment limiting the same to permanent residents of Sikkim. The petitioner had never challenged the provisions of Sikkim Judicial Service Rules, 1975 and the employment notice, and therefore, prayer for insertion of paragraph 50A, ground (xxii) and prayer (c)(i)(a), is without any merit. It is also contended by him that paragraph 53A and ground (xxi) sought to be incorporated by way of amendment do not, in any way, relate to the controversy raised in the writ petition and as such prayer made in respect of paragraph 53A and ground (xxi) may be rejected.

9. While adopting the submission of Mr. Moulik, Mr. Bhutia has also objected to the amendment sought for by way of insertion of paragraph 53A.

10. I have considered the submissions of Mr. Sharma as well as learned Counsel appearing for respondents and have considered the materials on record.

11. Mr. Moulik is right in submitting that neither the employment notice nor the eligibility condition prescribed in Sikkim Judicial Service Rules, 1975, is challenged by the petitioner. The eligibility conditions as per the employment notice are as follows:-

"(a) Candidate must be citizen of India.

(b) Candidate must be a holder of a degree in law, granted by a University established by law in India.

- (c) *Candidate must not be more than 35 years of age as on the last date fixed for receipt of applications.*
- (d) *Candidate must be able to communicate in Nepali, or any other language of the State.*
- (e) *Candidate must have adequate knowledge in Computer applications to be tested at the time of viva-voce."*

12. There is no condition that one will be eligible to respond to the employment notice only if he is a permanent resident of Sikkim or Sikkimese National, as the petitioner puts it. If that be the position, this Court is of the opinion that amendments, by way of insertion of paragraph 53A, ground (xxii) and prayer (c)(i)(a) do not deserve to be allowed.

13. Any subsequent promotion earned by the petitioner in his current employment would be of no relevance as the issue of antecedents would have to be considered with reference to the antecedents at the time of withdrawal of the recommendation and, therefore, this Court is also of the opinion that prayer for insertion of paragraph 10A and ground (xxi) does not merit acceptance.

14. The petitioner had filed the Writ petition in person and he has been appearing in person as well. The petitioner is not a trained person in law and in that view of the matter, I am inclined to allow amendment by way of insertion of paragraph 53A in the Writ Petition, wherein the petitioner has sought to explain the delay in approaching the Court.

15. Accordingly, amendment as proposed in paragraph 53A is allowed.

16. The petitioner will file consolidated amended Writ Petition within three weeks. The respondents are at liberty to file affidavit to the amended Writ Petition, within three weeks thereafter, if so advised.

17. I.A No.05 of 2019 stands disposed of.

18. Registry will list this case on 17.08.2020 for orders.

Chief Justice

pm/avi