

# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 27<sup>th</sup> June, 2022

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SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

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WP(C) No.10 of 2020

**Petitioners** : Tseten Palzor Bhutia

**versus**

**Respondents** : State of Sikkim and Others

Application under Articles 226  
of the Constitution of India

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**Appearance**

Mr. Zangpo Sherpa, Advocate for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Yadev Sharma, Government Advocate and Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 and 3.

Mr. Bhusan Nepal, Advocate for the Respondent No.2.

Mr. J. B. Pradhan, Senior Advocate with Mr. D. K. Siwakoti and Ms. Prarthana Ghataney, Advocates for the Respondent No.4.

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## **J U D G M E N T**

Meenakshi Madan Rai, J.

**1(i).** The Petitioner, an Additional Superintendent of Police was initially appointed in the rank of Deputy Superintendent of Police, in the Police Department, Government of Sikkim by a letter of appointment dated 09-11-2015. He assails the offer of appointment made to the Respondent No.4 (hereinafter "R4"), dated 10-05-2016 (Annexure-P7), and the appointment Order, dated 25-06-2016, appointing R4 as Deputy Superintendent of Police and prays that both be set aside. That, the *inter se* seniority settled vide Notification bearing No.106/GEN/DOP, dated 02-08-2016, whereby R4 has been placed at Serial no.69 while he has

been placed at Serial no.70 also be set aside and he be placed at Serial no.69 of the seniority list. That, the Respondents be directed to make necessary corrections in the Office Order, dated 03-09-2019, (vide which he and R4 were promoted to the post of Additional Superintendent of Police), by placing him at Serial no.1 instead of R4. That, the Respondents be ordered to refrain from taking steps on the Order dated 03-09-2019 and a fresh seniority list be published with the rectifications sought *supra*.

**(ii)** The Petitioner's case summarized is that on 12-09-2012, the Sikkim Public Service Commission (hereinafter "R2"), issued an advertisement for filling up twenty-five posts of Under Secretaries and equivalent, in the junior grade of the Sikkim State Civil Service (hereinafter "SSCS"). On 27-11-2012, by an addendum to the advertisement, two posts of Deputy Superintendent of Police (hereinafter "DySP") were also included. The advertisement made no mention of a Panel List or Waiting List. The Petitioner along with R4 and other candidates appeared for the preliminary examination conducted by R2 on 20-07-2014 and the main examinations from 23-02-2015 to 26-02-2015. R2 published the names of selected candidates on 09-06-2015. For the post of DySP, one Ms. Barbara Lama (hereinafter "Candidate No.1"), was selected in the unreserved category, while the Petitioner was selected also to the post of DySP, in the reserved category of Bhutia/Lepcha (BL). Two candidates selected to the post of Under Secretary (hereinafter "US") declined to take the appointment, thus the said two posts remained vacant. The Candidate No.1, who was first in the Merit List for DySP was not appointed in the post on grounds that she was not entitled to a Certificate of Identification

(hereinafter "COI"). The Petitioner upon receiving his letter of appointment, dated 19-11-2015, joined training at the North Eastern Police Academy (hereinafter "NEPA"), Meghalaya from January, 2016. His letter of appointment stated that seniority would be maintained as declared by the R2 vide its Notice bearing No.93/SPSC/2015, dated 09-06-2015. The Petitioner later came to learn of the appointment of R4 in the post of DySP vide Order dated 25-06-2016 and of the Notification dated 02-08-2016, whereby in the *inter se* Seniority List of the members of the SSCS, R4 was placed at Serial no.69, while he was placed at Serial no.70, thereby making him junior to R4. Being thus aggrieved, he submitted a representation to R1 the Secretary, Department of Personnel, Administrative Reforms, Training and Public Grievances through R3, the Director General of Police, on 24-10-2017. He apprised R1 that R4 had joined his training centre in July, 2016 while he had joined NEPA in January, 2016 therefore R4 was junior to him in service. In response R1 informed him that his prayer could not be considered as the *inter se* seniority was determined on merit, based on the exam results declared by R2. Hence, the instant Writ Petition seeking the prayers reflected hereinabove.

**2.** R1 disputed the contentions of the Petitioner and by averments sought to clarify that that as doubts were raised about the COI submitted by the Candidate No.1 who was selected to the post of DySP, a *Suo Motu* investigation was carried out by the Special Branch, Sikkim Police, meanwhile the process of her appointment was kept in abeyance till the outcome of the aforesaid investigation, with Government approval. The Petitioner, in the interregnum was appointed as DySP. Following

the investigation the COI issued to Candidate No.1 was cancelled on 21-03-2016, on discovery that it had been obtained by misrepresentation, as also her selection to the post of DySP. Pursuant thereto, R1 issued a requisition to R2 vide communication dated 31-03-2016, providing the Merit List of candidates and sought their opinion for consideration of appointment of the next candidate on merit. Vide its letter dated 09-04-2016, R1 was informed by R2 of the cancellation of the COI of Candidate No.1 and as a consequence her selection to the post of DySP. In the Merit List forwarded by R2, the name of R4 found place next below Candidate No.1. In the intervening period R4 filed WP(C) No.66/2015, on 01-12-2015, before this Court seeking appointment to the post of either US or DySP which were lying vacant. With the approval of the State Government R4 was appointed as DySP on 25-06-2016 as the candidature of the Candidate No.1 was cancelled. He could not be appointed in the post of US as the posts were already utilised by the selected candidates and would be carried on to the next recruitment process and there was no Panel List. That, the prayer of the Petitioner seeking rectification of the Seniority List was rejected after the matter was duly examined by the State Government and the Law Commission, hence, the Petition deserves a dismissal.

**3.** R2 while countering and disputing the averments of the Petitioner emphasized that the candidature of R4 for the post of DySP was against a post notified for the unreserved category while the Petitioner was selected in a reserved category. That besides the Writ Petition filed by R4 being WP(C) No.66/2015 another WP(C) No.15/2016, was filed by one Tshering Eden Bhutia, on 14-

05-2016, with a prayer to appoint her in the post of US or equivalent on grounds that R2 had considered the case of R4 herein and appointed him to the post of DySP. The Commission contested the Writ Petition on the grounds that R4 was appointed on the "cancellation" of the candidature of Candidate No.1 and that the advertisement for the post of US and DySP clearly indicated that if on verification at any time, before or after the preliminary Examination, Main(written) Examination and Interview Test, it was found that the candidates do not fulfill any of the eligibility conditions, their candidature for the examination/post would be cancelled by the Commission. The Writ Petition of Tshering Eden Bhutia was dismissed by this Court vide Judgment dated 03-08-2017, on grounds that when two seats reserved for Bhutia/Lepcha (BL) women were filled up by other women candidates from the said category, the Petitioner could not be permitted to supersede or by pass the Merit List, as there were two male candidates better placed in the Merit List than the Petitioner. That, R4 was appointed on Candidate No.1 not fulfilling the eligibility criteria and the consequent cancellation of her COI. It was also averred that as per the combined Merit List, R4 ranked higher in the merit position than the Petitioner. That, the Writ Petition being untenable in the eyes of law, be dismissed.

**4.** R4 in his Counter-Affidavit by and large reiterated the averments put forth in the Counter-Affidavit of the R1 and R2 and added that the Select List of candidates is not the Merit List as erroneously interpreted by the Petitioner, hence the Petition be dismissed with costs.

**5.** Rejoinder was filed by the Petitioner disputing the averments made in the Returns of the Respondents.

**6(i).** Opening his arguments for the Petitioner Learned Counsel contended that the Petitioner was primarily aggrieved by two issues *viz.* the appointment of R4 on 25-06-2016, despite completion of the selection process, in the post of DySP *sans* a Panel or Waiting List of selected candidates and secondly by the *inter se* Seniority List dated 02-08-2016, in which R4 was placed at Serial no.69 higher in seniority than the Petitioner who was at Serial no.70. Leading this Court through the documents and the correspondence relied on by the Petitioner, it was argued that in the Provisional Seniority List of DySP in the Sikkim State Police Service (hereinafter "SSPS"), when the name of the Petitioner appeared at Serial no.38, R4 was not even appointed then. Vide a communication of R1 dated 19-03-2016 to all Sikkim Police Service Officers', a provisional Seniority List was circulated and the Officers' were to submit their comments, within fifteen days, of the issuance of the letter, failing which, it would be presumed that they had consented and seniority would be fixed accordingly. As the Provisional List and the seniority therein was not set aside, it is assumed to have been confirmed after fifteen days.

**(ii)** Inviting the attention of this Court to Annexure-R1-2, Communication dated 09-04-2016, it was urged that R2 as per its relevant Rules was to have put forth a recommendation for the appointment of the R4, which was however given a go by. That, a copy of the communication dated 09-04-2016 was not made over to the Petitioner despite him having filed an application under the Right to Information (RTI). Reliance was placed on **Gujarat State Dy.**

***Executive Engineers Association vs. State of Gujarat and Others***<sup>1</sup> where the provision of Waiting List was explained. It was further urged that infact the recommendation for appointment of R4 by R2 did not materialise due to the non-existence of a Waiting List or Panel List, which would have enabled selection of candidates in the event of any contingency. That, R2 in its earlier Counter-Affidavit to the Writ Petition filed by R4 had averred that should vacancies arise during the said recruitment process they would not be filled but be carried over to the next recruitment process. That, in contradiction to that averment the State-Respondents have now taken a stand that as R4 was already in the Merit List he was selected for appointment, which is in violation of the Rules. On this point assistance was drawn from the ratio in ***Bihar State Electricity Board vs. Suresh Prasad and Others***<sup>2</sup>, ***Vallampati Sathish Babu vs. State of Andhra Pradesh and Others***<sup>3</sup>.

**(iii)** Emphasizing that the Petitioner had been wrongly deprived of his seniority it was contended that R4 was not even borne in the cadre when the Petitioner was appointed and his appointment letter assured the maintenance of seniority in terms of the Notice dated 09-06-2015. That, although R4 was appointed later he was placed higher in seniority despite the settled position of law that *inter se* seniority cannot be granted on a retrospective date. To buttress his submissions reliance was placed on ***Ganga Vishan Gujrati and Others vs. State of Rajasthan and Others***<sup>4</sup>. That, when R4 filed the Writ Petition seeking appointment as US or DySP in December, 2015 he did not seek a stay of the Provisional Seniority List which thereby attained finality on 19-03-2016 and

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<sup>1</sup> (1994) Supp (2) SCC 951

<sup>2</sup> (2004) 2 SCC 681

<sup>3</sup> (2022) SCC Online SC 470

<sup>4</sup> (2019) 16 SCC 28

cannot be tampered with. That, there has been violation of the provisions of Articles 14 and 16 of the Constitution of India by the appointment of R4 which is thus required to be set aside as it would otherwise perpetuate an illegality. Learned Counsel for the Petitioner also urged that the opinion of the Law Commission relied on by the Respondents, that the appointment and placement in seniority of R4 was not illegal, is erroneous. To fortify his submissions that Rules were not adhered to for the recruitment of R4 reliance was placed on ***Nagendra Chandra and Others vs. State of Jharkhand and Others***<sup>5</sup>, ***State of Bihar and Others vs. Devendra Sharma***<sup>6</sup> and ***State of Bihar and Others vs. Arbind Jee and Others***<sup>7</sup>. Contending that the doctrine of delay and laches is inapplicable to a Writ of Quo Warranto reliance was placed on ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Others***<sup>8</sup>. Justifying that the Petition was filed well within time strength was garnered from ***K. R. Mudgal and Others vs. R.P. Singh and Others***<sup>9</sup>, hence the Petitioner be granted the reliefs claimed.

**7.** Learned Additional Advocate General for R1 and R3 submitted that in the first instance, the question of Panel List or Waiting List does not arise as the Government by a Notification dated 16-10-2015, has done away with such requirement. That, the Petitioner was selected in a reserved category while R4 was appointed in an unreserved category. That, the appointment of R4 arose after the results of the selected candidates was published and the Candidate No.1 in the selected list of DySP on verification was found not entitled to a COI, which was thus cancelled, vide an

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<sup>5</sup> (2008) 1 SCC 798

<sup>6</sup> (2020) 15 SCC 466

<sup>7</sup> (2021) SCC Online SC 821

<sup>8</sup> (2014) 1 SCC 161

<sup>9</sup> (1986) 4 SCC 531

order of the concerned Authority, on 21-03-2016. When the Writ Petition of R4 was filed on 01-12-2015, no person had been appointed to the said post of DySP in the unreserved category, in which the Candidate No.1 had qualified, who in the first instance was not even eligible to take the examination. Consequently, R4 was selected for appointment on the basis of the Merit List, wherein he ranked higher than the Petitioner. That, R4 cannot be faulted for his delayed appointment as it was for reasons beyond his control or for that matter beyond the control of any of the Respondents herein. Thus, the selected Candidate No.1 was never appointed to the post, on account of her disqualification, which translated into the vacancy never having been filled at any point in time as distinguished from the cases in the post of Under Secretaries where two selected candidates were appointed but declined the appointment, as a result of which the vacancies would be carried over to the next recruitment process. While addressing the question of seniority, the Sikkim State Services (Regulation of Seniority) Rules, 1980 was referred to and reliance placed on Rule 4(c), which governs direct recruits. It was urged that as per the Rules merit is the criteria for seniority and not the date of joining office, as erroneously contended by Learned Counsel for the Petitioner. To fortify his contentions, reliance was placed on **Anjan Kumar Mandal vs. Union of India**<sup>10</sup>. That, the Petition being without merit deserves to be dismissed.

**8(i).** Learned Senior Counsel for R4 advanced the arguments that the contentions put forth for the Petitioner are fallacious both factually and legally. He asserted that the

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<sup>10</sup> 2017 SCC Online Del 12028

appointment of R4 was neither against a Panel List or a future vacancy but was on that particular advertised vacancy for recruitment. That, the contention of the Petitioner that the selection process was completed on publication of the Select List, is an incorrect proposition as the selection process concludes only on verification and the consequent filling up of all vacancies. To buttress this submission reliance was placed on **Public Service Commission, Uttaranchal vs. Mamta Bisht and Others**<sup>11</sup>. It was next urged that as per the relevant Rules relied on by R1 seniority is based on merit and not the Select List of candidates or the date of joining of service by the appointed candidate, neither is seniority based on the Provisional List as incorrectly contended by the Petitioner. That, the appointment of R4 arose on account of the cancellation of the candidature of Candidate No.1 and steps taken by R1 on the recommendation of R2, in view of the above circumstance of cancellation. That, it is unfortunate that R4 despite being appointed in an unreserved category, on merit, has to defend his appointment after four years, due to the untenable claims of the Petitioner, that too when he has already availed of promotion to a higher post. That, seniority ought not to be disturbed after a long lapse of time. On this count reliance was placed on **K. R. Mudgal and Others (supra)**. That, the Seniority List was issued on 02-08-2016, on which date the cause of action arose and does not get extended by way of belated filing of the Writ Petition on 06-03-2020. In any event, although, the Writ Petition of R4 was filed on 01-12-2015, the Petitioner did not assail the appointment of R4 as illegal, his grievance being limited to an alleged erroneous ranking

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<sup>11</sup> (2010) 12 SCC 207

in seniority of the R4. The Petitioner filed his first grievance against R4 regarding seniority, before R1 on 24-10-2017, sixteen months after the appointment of R4. The Government rejected his representation on 07-04-2018. Thereafter, the Petitioner filed the instant Writ Petition only on 06-03-2020, much after R4 was promoted to the subsequent senior post of ASP on 03-09-2019. That, although, the legal Notice dated 11-02-2019 and 11-07-2019 of the Petitioner states that numerous representations were made by the Petitioner, records reveal that only one representation was filed by him and came to be rejected.

**(ii)** In the next leg of his argument Learned Counsel for R4 contended that the Petition was not maintainable on grounds of delay, laches and acquiescence towards which reliance was placed on ***P. S. Sadasivaswamy vs. State of Tamil Nadu***<sup>12</sup>. That, in ***Prakash K. and Another vs. State of Karnataka and Others***<sup>13</sup>, where delay of nineteen months occurred in approaching the Court, delay was not condoned by the Hon'ble Supreme Court, moreover why the delay occurred in filing the Writ Petition herein has not been explained. It was observed by the Hon'ble Supreme Court in ***Vijay Kumar Kaul and Others vs. Union of India and Others***<sup>14</sup>, that even when a fundamental right is involved, the Court has the right to decide on delay and laches. That, in ***State of Uttaranchal and Another vs. Shiv Charan Singh Bhandari and Others***<sup>15</sup>, the Hon'ble Supreme Court has held that filing of Writ Petition alone does not condone delay. Pointing to the Office Order dated 09-11-2015 of the Petitioner, attention was drawn to Paragraph 3 of the said Order wherein it is

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<sup>12</sup> (1975) 1 SCC 152

<sup>13</sup> (1996) 11 SCC 563

<sup>14</sup> (2012) 7 SCC 610

<sup>15</sup> (2013) 12 SCC 179

specified that the *inter se* seniority will be as per the order of merit, therefore the Petitioner even on the date of his appointment was aware that seniority would be on the basis of merit and not dependant on the date of joining service. To support this stance reliance was placed on ***State of Uttaranchal and Another vs. Shiv Charan Singh Bhandari and Others (supra)***, ***State of Tamil Nadu vs. Seshachalam***<sup>16</sup> and ***Vijay Kumar Kaul and Others (supra)***.

**(iii)** Pressing home the point pertaining to estoppel and acquiescence, the observation in ***P.S. Gopinathan vs. State of Kerala and Others***<sup>17</sup> was relied on. It was contended that the Petitioner has no *locus standi* to challenge the appointment of R4, besides the Petitioner's appointment was in a reserved category while that of R4 is in an unreserved category and he ranked higher in merit and his seniority after the lapse of time cannot be disturbed. Strength was drawn from the ratio in ***M.P. Palanisamy and Others vs. A. Krishnan and Others***<sup>18</sup>. That, the Hon'ble Supreme Court in ***Bimlesh Tanwar vs. State of Haryana and Others***<sup>19</sup>, has clearly propounded that even in the absence of Rules, merit will be the criteria for appointment. It was sought to be clarified that the vacancy created by declining to fill the post is to be distinguished from the vacancy which arose by the cancellation of candidature of the Candidate No.1, is as much as, although selected, she could not be appointed. Hence, in the light of the facts and legal stance placed before this Court the Petition deserves a dismissal.

**9.** Learned Counsel for R2 while relying on the averments made in his Counter-Affidavit and while endorsing the submissions

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<sup>16</sup> (2007) 10 SCC 137

<sup>17</sup> (2008) 7 SCC 70

<sup>18</sup> (2009) 6 SCC 428

<sup>19</sup> (2003) 5 SCC 604

put forth by Learned Additional Advocate General for R1 and R3 and Learned Senior Counsel for R4, invited the attention of this Court to the letter dated 09-04-2016, written by R2 to R1 regarding the cancellation of the candidature of Candidate No.1 and the resultant vacancy. That, consequently the Merit List was submitted to R1 who acted upon it, hence no error arises in the functioning of the R2.

**10.** In rebuttal, Learned Counsel for the Petitioner relied on the ratio in *Shiba Shankar Mohapatra and Others vs. State of Orissa and Others*<sup>20</sup>, wherein the Hon'ble Supreme Court while dealing with the delay and laches held that "reasonable time" is between three to four years. Reliance was placed on *Madan Lal and Others vs. State of Jammu Kashmir and Others*<sup>21</sup>, to buttress his submissions that once the vacancies are filled by candidates taken in order of merit from the Select List, that list will get exhausted having served its purpose, hence the appointment of R4 is illegal.

**11(i).** I have duly considered the submissions made at the Bar, perused the pleadings, all documents on record and citations relied on by Learned Counsel.

**(ii)** The questions that fall for determination before this Court are;

1. Whether the appointment of R4 on account of the cancelled candidature of a selected candidate was legal, in the absence of a Panel list?
2. Whether R4 preceding the Petitioner in seniority, despite being appointed in service later in time than him is legally tenable?

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<sup>20</sup> (2010) 12 SCC 471

<sup>21</sup> AIR 1995 SC 1088

3. Whether the Writ Petition is rendered nugatory on account of delay, laches and acquiescence?

**12(i).** While taking up the first question hereinabove for consideration, for brevity the facts herein or details of the Writ Petition filed by R4 WP(C) No.66/2015 seeking appointment to the posts of US and DySP are not being reiterated. It may relevantly be clarified here as pointed out by Learned Senior Counsel for R4 and the Additional Advocate General for R1 and R3 that, the post in which Candidate No.1 was selected was never utilised, in as much as she was never appointed to the post on account of cancellation of her candidature, following Police investigation and verification of her documents. In other words she was disqualified before appointment. Hence, in contrast to the two posts of US that fell vacant on the two selected candidates declining to join the post, no candidate was actually appointed in the post of DySP. The selection process could not be stated to be completed until all requisite verification in terms of the condition in the Select List of 09-06-2015 was carried out. On this aspect I am inclined to agree with Learned Senior Counsel for R4. As the posts of US fell vacant after the appointment of the candidates, the posts were to be carried over to the next recruitment process. Reliance on **Madan Lal** (*supra*) by Learned Counsel for the Petitioner is misplaced. It was observed therein *inter alia* that once the requisite vacancies are filled by candidates taken in order of merit from the Select List, that list gets exhausted having served its purpose. The case at hand can be distinguished from the said ratio for the reason that Candidate No.1 was not even eligible to take the examination, in other words

as already stated her candidature was disqualified and R4 was appointed as he appeared next below her on merit.

**(ii)** Learned Counsel for the Petitioner had also canvassed the arguments that the appointment of R4 was in violation of Articles 14 and 16 of the Constitution of India and on this count reliance was placed on **Nagendra Chandra and Others (supra)**. The recruitment process therein was found to be in infraction of the Rules and violation of Articles 14 and 16 of the Constitution. This judgment too is of no assistance to him as in the instant matter all eligible candidates had been given equal opportunity and the vacant posts advertised. Reliance on **State of Bihar and Others vs Arbind Jee and Others (supra)** also lends no succour to the case of the Petitioner, as R4 was not illegally appointed as emanates from the circumstances placed before this Court and discussed hereinabove.

**13(i).** Learned Counsel for the Petitioner also urged that as the R2 did not issue any Waiting List or Panel List the appointment of R4 was illegal and relied on **State Bihar Electricity Board (supra)** on this facet. Having perused the ratio it has no bearing to the facts of the instant Writ Petition as the candidates clamouring for appointment therein were those who were in the Waiting List which is non-existent in this case. Besides the Hon'ble Supreme Court also observed that even if the number of vacancies were notified for appointment and even if the adequate number of candidates were found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. **Vallampati Sathish Babu (supra)** also fails to fortify the case of the Petitioner as the facts are distinguishable in as much as the

selected candidate in **Vallampati Sathish Babu** (*supra*) had failed to join the post although selected, while the facts with regard to the Petitioner's case was not one in which the selected candidate failed to join.

**(ii)** At this juncture, it may necessarily be noticed that R1 had done away with the system of maintaining a Panel of selected candidates for appointment to any vacant post even if a vacancy arose out of any contingency. In this context, we may a carefully scrutinise the Notification dated 11-06-2015 bearing No.16/GEN/DOP and the amending Notification dated 16-10-2015, bearing No.36/GEN/DOP, the relevant portions of which are extracted below;

**"GOVERNMENT OF SIKKIM  
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE  
REFORMS, TRAINING AND PUBLIC GRIEVANCES  
GANGTOK-SIKKIM**

No. 16/GEN/DOP

Date: 11/06/2015

**NOTIFICATION**

2. In the Sikkim Government Establishment Rules, 1974, in sub-rule (4) of rule 4, in item D-

(1) after clause (i), the following clause shall be inserted namely:-

**"(ii) Any vacancies under the State Government Service, arising after initial direct recruitment on the basis of the results of open competitive examinations, shall be filled-up, within a period of 1 (one) year from the date of declaration of the results of such examination from the panel of qualifying candidates which shall be valid for a period of 1(one) year, on merit basis in accordance with the reservation rules of the State Government.";**

(2) the existing clauses (ii),(iii) and (iv) shall be renumbered as clauses (iii), (iv) and (v) respectively.

**BY ORDER AND IN THE NAME OF THE GOVERNOR**

**Sd/-  
JOINT SECRETARY TO THE GOVERNMENT  
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING  
& PUBLIC GRIEVANCES**

....."  
(emphasis supplied)

On 16-10-2015 a Notification bearing No.36/GEN/DOP was issued amending Rule 4(4) of the said Rules in item D which is reproduced below;

**"GOVERNMENT OF SIKKIM  
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE  
REFORMS, TRAINING AND PUBLIC GRIEVANCES  
GANGTOK-SIKKIM**

No. 36/GEN/DOP

Date: 16/10/2015

**NOTIFICATION**

2. In the Sikkim Government Establishment Rules, 1974, in sub-rule (4) of rule 4, in item D-

- (1) **clause (ii) and the entries relating thereto shall be omitted;**
- (2) **the existing clauses (iii), (iv) and (v) shall be renumbered as clauses (ii),(iii) and (iv) respectively.**

**BY ORDER AND IN THE NAME OF THE GOVERNOR**

**Sd/-**

(K.K.Basnet)SCS

**SPECIAL SECRETARY TO THE GOVERNMENT  
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING  
& PUBLIC GRIEVANCES**

....."  
(emphasis supplied)

Hence, it is evident that the amending Notification did away with clause (ii) *supra* which provided for a Panel of qualifying candidates, in other words for any vacancies arising in the State Government Service, upon selection of candidates there would be no Panel or Waiting List prepared. This position thus lends a quietus to the din raised by Learned Counsel for the Petitioner with regard to the absence of the Panel/Waiting List and the appointment of R4 despite its non-existence.

**(iii)** Appositely in the context of this Writ Petition, the observation of the Hon'ble Supreme Court in ***Purushottam vs.***

**Chairman M.S.E.B and Another**<sup>22</sup>, may be considered. In the said matter the Appellant was selected against a post reserved for the Scheduled Tribe. The Respondent Board doubted such status of the Appellant on which a dispute arose, which ultimately stood resolved in his favour. Before the High Court, which was persuaded to accept the contention, the Respondent Board contended that no appointment could be given to the Appellant because during the pendency of the dispute, some other person had been appointed to the post, hence there was no vacancy and the term of the Panel had also expired. In Appeal, the Hon'ble Supreme Court held that usurpation of the post by someone else was not due to the fault of the Appellant but on account of the erroneous decision of the Board and directed the Board to appoint the Appellant. Similarly, in the instant case at hand, the COI status of the successful candidate was found to be under suspicion and as providence would have it the dispute stood resolved against her. The post she could have been appointed to thus remained vacant. If the COI had not been tested on the veracity of truth, the circumstances would have differed, R4 being next in the Merit List was entitled to the post and appointed thereto.

**(iv)** In **Bedanga Talukdar vs Saifudaullah Khan and Others**<sup>23</sup> relied on by Learned Counsel for the Petitioner, it was held that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India with no arbitrariness resulting or undue favour to any candidate and the selection process conducted strictly as per procedure. That, if the Rules provide for power of relaxation, it must be mentioned in the advertisement.

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<sup>22</sup> (1999) 6 SCC 49

<sup>23</sup> (2011) 12 SCC 85

Reliance on this ratio is veritably an exercise in futility by the Petitioner as no relaxation clause was ever invoked or exercised by the State Respondents during the recruitment process. The relevant vacant posts were advertised with all eligible candidates extended an equal opportunity as envisioned by Article 14 of the Constitution as also Article 16, and the circumstances of the appointment of R4 have been elucidated in the foregoing paragraphs.

**(v)** The attention of this Court was drawn by the Petitioner to the ratio of the Hon'ble Supreme Court in **Gujarat State Dy. Executive Engineers Association (supra)**, wherein the questions which were determined were; What is a Waiting List?; Can it be treated as a source of recruitment from which candidates can be drawn as and when necessary?; and lastly how long can it operate. In my considered opinion it is irrelevant to consider the details of this ratio as the question of "Waiting List" is not even an issue, the provision pertaining to the Waiting List and Panel List having been done away by the Government as elucidated, (*supra*).

**(vi)** Thus, while determining question no.1, in light of the foregoing discussions the appointment of R4 cannot by any stretch of the imagination be held to be illegal.

**14(i).** Now, taking up the second question formulated (*supra*) for consideration; the stand of the Petitioner was that he is senior to R4 in service having joined service before him. In **Ganga Vishan Gujrati and Others (supra)**, relied on by the Petitioner, the Supreme Court has clearly reiterated that retrospective seniority cannot be granted to an employee from the date when the employee was "not" appointed in a cadre. Indeed, there can be no deviation from

this law propounded by the Hon'ble Supreme Court, nevertheless, no succour can be derived by the Petitioner by reliance on this ratio as the matter dealt with the appointment and promotion of Patwaris under the relevant Rules in Rajasthan. The Petitioner and R4 herein are governed by the Sikkim State Services (Regulation of Seniority) Rules, 1980, Rule 4(c), Seniority is to be governed by the relevant Rules applicable to the State Service and cannot be imported by way of reliance on Rules of other States which have no bearing to the parties herein.

**(ii)** We may therefore look into the Sikkim State Services (Regulation of Seniority) Rules, 1980 relied on by the Respondents wherein it is elucidated at Rule 2 as follows;

**"2. Application.-** These rules shall apply to persons appointed to the following Services,-

- (a) Sikkim Civil Services;
  - (b) State Police Services;
  - (c) State Forest Services;
- .....

**4. Determination of seniority.-** The seniority of the members of the Service shall be determined separately in respect of each Service in the manner specified below,-

.....

(c) **The seniority of members of the Service who are recruited on the results of the competitive examination in any year shall be ranked inter-se in the order of merit in which their names appear in the result of that competitive examination; those recorded on the basis of the earlier examination shall rank senior to those on the basis of later examination."** (emphasis supplied)

The Rule is not only self explanatory but with clarity elucidates that the criteria for *inter se* seniority shall be in the order of merit in which the candidates' names appear in the result of that competitive examination. Besides, it is essential to consider Paragraph 3 of the appointment letter of the Petitioner, viz., the Office Order of the Petitioner bearing no.1599/G/DOP, dated 09-11-2015, which is reproduced herein below for easy reference;

**"GOVERNMENT OF SIKKIM  
DEPARTMENT OF PERSONNEL, ADM. R. & TRAINING & PG  
GANGTOK**

**No.1599/G/DOP**

**Date: 09.11.2015**

**OFFICE ORDER**

On recommendation of the Sikkim Public Service Commission, the Governor is pleased to appoint Shri Tseten Palzor Bhutia to the post of Deputy Superintendent of Police in the Junior Grade of Sikkim State Police Service in the PB-I2I of Rs.9300-38400 and Grade Pay of Rs.5400/- with effect from the date of his joining at the Training Institute, National Eastern Police Academy, Meghalaya.

However, during the period of 1<sup>st</sup> year of training/probationship/Apprenticeship, his pay shall be governed by the Notification No.489/GEN/DOP dated 31.10.2011.

**His inter-se-seniority will be maintained as per the order of merit declared by the Sikkim Public Service Commission vide Notice No.93/SPSC/2015 dated 09.06.2015.**

As usual, he shall be on probation for a period of two years and other terms and conditions of services will be as laid down in the Memorandum No.10869/G/DOP dated 06.10.2015.

BY ORDER,

**Sd/-  
(SUREKHA PRADHAN) MRS.  
ADDITIONAL SECRETARY TO THE GOVERNMENT OF SIKKIM**

....."  
(emphasis supplied)

Paragraph 3 extracted hereinabove makes it crystal clear with no ambiguity whatsoever, that, the *inter se* seniority of the Petitioner would be maintained in terms of the order of merit issued in the Notice dated 09-06-2015 which bears reference no.93/SPSC/2014. The Notice referred to is extracted below and reads as follows;

**"SIKKIM PUBLIC SERVICE COMMISSION  
GANGTOK, SIKKIM**

**Reference No:93/SPSC/2015**

**Dated: 09/06/2015**

**NOTICE**

The Sikkim Public Service Commission announces the results on the basis of the marks obtained in Main (Written) Examination and Viva-voce for selection to 25 posts of Junior Grade of State Civil Service as Under Secretary and equivalent and 02 posts of Deputy Superintendent of Police under Sikkim State Police Service, the candidates bearing the following Roll Nos. are hereby declared qualified in order of merit and their names are recommended for appointment.

**DEPUTY SUPERINTENDENT OF POLICE (DSP)**

Sl No.	Roll No	NAME
1	2480	BARBARA LAMA
2	3395	TSETEN PALZOR BHUTIA

.....

**The candidature of all candidates as shown in the list is provisional subject to the police verification, medical fitness and verification of all required documents by the State Government.**

Sd/-(O.P. SAPKOTA)  
Controller of Examination  
Sikkim Public Service Commission"  
(emphasis supplied)

It emanates without a doubt from a bare reading of the Notice that the list of selected candidates was only provisional and their selection was subject to the conditions laid down in the last paragraph extracted above. Hence, if any candidate did not fulfill any condition mentioned therein *viz.*, if the person's selection did not withstand Police verification, medical fitness and verification of all required documents by the State Government, their candidature would be cancelled. In addition to the above stance the Memorandum of the offer of appointment to the Petitioner dated 06-10-2015, at Paragraph 2(v) specifies that other conditions of service will be governed by the relevant Rules and orders enforced from time to time. At the relevant point in time undisputedly Rule 4(c) governed the aspect of seniority of the Government Servants and was applicable to the Petitioner and R4. Seniority in no uncertain terms was to be determined on merit.

**(iii)** The Provisional Seniority List relied on by the Petitioner to bolster his position on seniority also fails to come to his rescue, for the reason that firstly it was, as denoted, only a "Provisional" Seniority List and R4 was not appointed to the post then. On his appointment to the post, as merit was the criteria for seniority, R4 took precedence over the Petitioner in the seniority as he stood higher in the Merit List than the Petitioner, thus there is no error in the placement of R4 in seniority above the Petitioner. It is apposite at this juncture to refer to the ratiocination in ***K. A. Abdul Majeed v.***

**State of Maharashtra** [(2001) 6 SCC 292], wherein it was observed that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been, though even on merit, incorrectly fixed. In the case at hand merit is not even incorrectly fixed.

**(iv)** In view of the foregoing discussions the second question also stands determined in favour of R4.

**15(i).** Now to address the third question which pertains to delay and laches, strength was sought to be drawn by Learned Counsel for the Petitioner on the judgment of Hon'ble Supreme Court in **Shiba Shankar Mohapatra and Others** (*supra*) the Hon'ble Supreme Court referred to the ratio in **K.R. Mudgal** [(1986) 4 SCC 531] wherein it was held that a Seniority List which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Learned Counsel for the Petitioner interpreted that to mean that 3-4 years is a "reasonable period" for challenging the seniority. The interpretation cannot be twisted out of context. Besides, the Hon'ble Supreme Court has also referred to a plethora of cases (*in the same ratio*) wherein it was held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding the seniority, rank and promotion which have accrued to them during the intervening period.

**(ii)** In **Tilokchand Motichand v. H.B. Munshi** [(1969) 1 SCC 110], it was observed that the principle on which the Court proceeds in refusing relief to the Petitioner on the ground of laches or delay, is that the rights, which have accrued to other persons by reason of delay in filing the writ petition should not be allowed to

be disturbed, unless there is a reasonable explanation for delay.

**(iii)** In **Rabindranath Bose vs. Union of India** [(1982) 1 SCC 379], it was observed that it would be unjust to deprive the respondents of the rights which had accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion which was effected a long time ago would not be set aside after the lapse of a number of years.

**(iv)** In **K. R. Mudgal v. R.P.Singh** [(1986) 4 SCC 531] it was held that a government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.

**(v)** In **P.S.Sadasivaswamy v. State of T.N** [(1998) 2 SCC 523] the Hon'ble Supreme Court while considering the petition which was filed after a lapse of fourteen years challenging a promotion *inter alia* observed that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward a stale claim. That, a person aggrieved by an order promoting a junior over his head should approach the Court at least within "six months" or at the most a year of such promotion. Similar views to the extent that grievance ought to be brought for redressal to Court at the earliest were reiterated in **Sudhama Devi v. Commissioner** [(1983) 2 SCC 1], **State of U.P v. Raj Bahadur Singh** [(1998) 8 SCC 685] and **Northern India Glass Industries v. Jaswant Singh** [(2003) 1 SCC 335], **M.P. Palanisamy and Others (supra)**, **State of Uttaranchal and Another vs. Shiv Charan Singh Bhandari and Others (supra)**, **State of Tamil Nadu vs. Seshachalam (supra)** and **Vijay Kumar Kaul and Others (supra)**. Law therefore leans in favour of the alert

and vigilant. It thus stands to reason from an understanding of the ratiocinations extracted hereinabove that although there can be no guarantee of security in all walks of employment, it should at least be possible to ensure that matters like a person's position in the seniority list after having been settled for once, should not be liable to be reopened after lapse of many years at the insistence of a party who has during the intervening period opted to remain silent.

**(vi)** Although, it was the specific contention of Learned Counsel for the Petitioner that several representations were made to the Government as pointed out by Learned Senior Counsel for R4, only one representation dated 24-10-2017, has been brought to the notice of this Court. No challenge arose to the appointment of R4 by the Petitioner at the time of Petitioner's appointment. The *inter se* seniority was settled on 02-08-2016 and the Petitioner's representation voicing his grievance was filed only on 24-10-2017. After the response of the Government dated 07-04-2018 rejecting his representation the Petitioner approached this Court only on 06-03-2020 after a lapse of one year and ten months with no reasons advanced for the delay. Even when R4 filed his Writ Petition in the year 2015 the Petitioner did not seek a stay of the appointment of R4 to the post of DySP. The legal Notice was also issued only in 11-02-2019, without giving any reasons as to the delay.

**(vii)** The ultimate argument of Learned Counsel for the Petitioner that in ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Others*** (*supra*), it was held that the doctrine of delay and laches is inapplicable while adjudicating on the issuance of a Writ of Quo Warranto, since the incumbent holds the public office as a

usurper, cannot be countenanced as the facts and circumstances reveal that the R4 is no usurper to the public office but is infact a victim of the circumstances that arose at the relevant time when he qualified in the examination. In light of the foregoing discussions, the Writ Petition is also rendered nugatory on account of delay and laches and thereby the assumption of acquiescence, which thereby answers the third question.

**16.** Consequently, it concludes that the Petitioner is not entitled to any of the reliefs claimed.

**17.** The Petition being without merit deserves to be and is accordingly dismissed and disposed of.

**18.** No order as to costs.

( **Meenakshi Madan Rai** )  
**Judge**  
27-06-2022