

# THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra-Ordinary Jurisdiction)

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SINGLE BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE  
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## W.P. (C) No. 14 of 2025

**RAM BAHADUR DAS,**

Son of Late Prabhu Das,  
R/o Tadong Bazar, Gangtok, Sikkim,  
737102.

... **Petitioner**

### *Versus*

- STATE OF SIKKIM,**  
Represented by and through  
The Chief Secretary,  
Government of Sikkim,  
Tashiling Secretariat,  
P.O. Tashiling Secretariat,  
Gangtok, Sikkim-737101.
- DEPARTMENT OF EDUCATION,**  
Represented by and through  
The Secretary,  
Government of Sikkim,  
Tashiling Secretariat,  
Gangtok, Sikkim – 737101.
- THE HEADMASTER,**  
Nandok Government Secondary School,  
P.O. Ranipool, Gangtok, Sikkim-737102.
- THE DIRECTOR,**  
Pension, Group Insurance and Provident Fund Finance,  
Revenue and Expenditure Department,  
Government of Sikkim,  
Gangtok, Sikkim, 737101. ... **Respondents**

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**Appearance:**

Mr. Ram Shankar Das and Ms. Neha Gupta, Advocates, for the Petitioner.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. S.K. Chettri, Government Advocate and Mr. Bhaichung Bhutia, Advocate, for Respondent Nos.1, 2 & 4.

None appears for Respondent No.3.

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Date of Hearing : 28.04.2026  
Date of Judgment : 06.05.2026  
Date on which uploaded : 06.05.2026  
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## **J U D G M E N T**

**(Hon'ble Mr. Justice A. Muhamed Mustaque, C.J.)**

The simple issue involved in this case, revolves around the order of compulsory retirement of the Petitioner from the service consequent upon conviction by the Criminal Court for an offense including one having moral turpitude. The Petitioner was ordered to be compulsorily retired after attaining the age of superannuation and was continuing in suspension for more than two decades.

2. The Petitioner approached this Court for the following reliefs:

"a) A Writ of or in the nature of certiorari and/or writ of like nature or any other writ, order or direction, commanding the Respondent No. 2 to quash the order dated 30.06.2021 whereby major penalty was imposed upon the Petitioner without any proceeding;

b) A Writ of or in the nature of certiorari and/or writ of like nature or any other writ, order or direction, commanding the Respondent No. 4 to rectify the order dated 04.04.2023 passed in this case and direct the Respondent to pay the pension as well as due full salary remaining since 2001 after deduction from subsistence allowance;

c) Costs of the proceedings;

And/Or

d) Any other Writ/Writs or Order/Orders or direction/directions or declaration as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

And for which the Petitioner as in duty bound shall every pray."

3. Detailed arguments have been raised at the Bar by learned Counsel for the Petitioner, supported by the assisting Counsel Ms. Neha Gupta, Advocate. They had also cited following judgments:-

- *State Bank of India and others vs. B.R. Saini.*<sup>1</sup>
- *State of Haryana, vs. Inder Prakash Anand and others.*<sup>2</sup>
- *State Bank of India & Ors vs. Navin Kumar Sinha.*<sup>3</sup>

4. I also had the advantage of hearing Mr. Zangpo Sherpa, learned Additional Advocate General, who also relied upon the case of *P.N. Saji vs. Kerala Public Service Commission.*<sup>4</sup>

5. The argument of the learned Counsel for the Petitioner proceeded on the proposition that once an employer and employee relationship stand terminated consequent upon attaining the age of superannuation, no punishment could have been imposed on the Petitioner. He also points out that without formal disciplinary proceedings the punishment of penalty by compulsory retirement is illegal. It is further argued that compulsory retirement is not a penalty, by relying upon the judgment of the Apex Court in *State of Orissa and others vs. Ram Chandra Das.*<sup>5</sup> Lastly, he argued that before ordering compulsory retirement, no opportunity was given to the Petitioner to raise objection to the proposed action.

6. Per contra, the learned Additional Advocate General submits that, by virtue of Rule 7 of the Sikkim Government Servants' (Discipline and Appeal) Rules, 1985 (hereinafter, "the S.G.S. Rules, 1985"), there is no requirement to hold a formal inquiry, in view of

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<sup>1</sup> 2023:PHHC:067046-DB.

<sup>2</sup> AIR 1976 SUPREME COURT 1841.

<sup>3</sup> 2024 SCC OnLine SC 3369, 2025 LabIC 290.

<sup>4</sup> 2025 SCC OnLine Ker 658.

<sup>5</sup> AIR 1996 SUPREME COURT 2436.

the fact that the Petitioner has been convicted by the Criminal Court under Sections 420, 468, 471 read with Section 465 of the Indian Penal Code, 1860. He also refers to Rule 7 (i) of the S.G.S. Rules, 1985.

7. Further, he argued that compulsory retirement is one of the major penalties that can be imposed under the Rule 3 of the S.G.S. Rules, 1985.

8. He points out that the Petitioner is having only 9 years 5 months and 20 days of qualifying service, rendering him ineligible for the pension.

9. Learned Additional Advocate General relied on Rule 17 of the Sikkim Services (Pension) Rules, 1990 and submitted that the competent authority has treated the period of suspension as extraordinary leave which shall not count as a qualifying service.

10. There is no dispute to the fact that the order of compulsory retirement as a major penalty was imposed after affirmation of the conviction by the Apex Court.

11. By the time his conviction was affirmed, the Petitioner attained the age of superannuation in the year 2017. However, he enjoyed Subsistence Allowance which is 75% of his salary, till 31.07.2019.

12. The question is whether the penalty could have been imposed after his retirement. It is to be noted that no disciplinary action is initiated prior to his retirement.

13. The invocation of Rule 7 of the S.G.S. Rules, 1985, in normal course would arise only when such a convicted Government Servant is in the service. When he attained the age of superannuation, there

was no scope for imposing any penalty on him inasmuch as he is not continuing in service. Anyway, I am leaving open this question that it does not require a consideration in this matter, inasmuch as what now survives, whether he is entitled for any pension.

14. Under Rule 25 of the Sikkim Services (Pension) Rules, 1990, pension will be granted on completion of minimum 10 years service. The Rule requires that a Government Servant should have a minimum qualifying service of 10 years to become eligible for pension. If the suspension period is not reckoned, admittedly, the Petitioner has only 9 years 5 months and 20 days.

15. Thereafter, only question now arises for consideration is whether a period of suspension will have to be treated as a qualifying service. The competent authority treated it as an extraordinary leave. Admittedly, the Petitioner was convicted by the Trial Court which was affirmed by the Appellate Court and also the High Court. The High Court only interfered with the term of sentence imposed on him. Therefore, there was a justification for continuity of suspension. This is not a case where suspension was illegal. It is also to be noted that the Petitioner never challenged suspension and enjoyed the Subsistence Allowance by sitting idle. It is in that context, the Respondent treated suspension period as the extraordinary leave. As per the Rule 17 of the Sikkim Services (Pension) Rules, 1990, period of suspension treated as extra-ordinary leave, shall not count as a qualifying service.

16. As per the fourth proviso to Rule 26 (2) of the Sikkim Services (Pension) Rules, 1990:

“.....

Provided further that if the qualifying service is less than 10 years, the competent authority may grant service gratuity at a reduced rate not less than half the gratuity admissible on the date of retirement.  
.....”

17. Therefore, a person who is having not less than 10 years of service will be entitled for gratuity as per the above Rule and that has been paid to the Petitioner.

18. I also found that order treating the suspension period as extra-ordinary leave as valid and justifiable.

19. That being the case, he was ineligible for pension as he had only put 9 years 5 months and 20 days as qualifying service. It is to be noted that the Petitioner enjoyed 75% of his salary as Subsistence Allowance even beyond his age of superannuation. This is a classic case of unlawful enrichment. The Government appears to be very benevolent in extending such Subsistence Allowance beyond his superannuating age and no proceedings seems to have been initiated for recovery of excess amount paid.

20. Absolutely, there is no scope of interference with the impugned order(s).

21. Accordingly, the writ petition, being, **WP(C) No.14 of 2025** stands dismissed.

**Chief Justice**

*Approved for Reporting: No  
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