

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extra Ordinary Jurisdiction)

DATED : 27<sup>th</sup> August, 2024-----  
**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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WP(C) No.39 of 2020

**Petitioner** : Dr. K. Bhandari**versus****Respondents** : State of Sikkim and Another

Application under Article 226 of the Constitution of India

**Appearance**

Ms. Laxmi Chakraborty, Advocate for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate with Ms. Charulata Chettri, Legal Officer (Respondent No.2) for the Respondents.

**JUDGMENT**Meenakshi Madan Rai, J.

**1.** By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioner seeks the following reliefs;

- (i) A declaration that, he is entitled to the benefit conferred by Notification No.158/GEN/DOP dated 19.12.2018, from 14.06.1988, the date of his joining service.
- (ii) A direction to the Respondent No.2 to grant the Super Specialty and Performance Allowance (SSPA) amounting to Rs.2,00,000/- per month, from June, 1988 to June, 1991 and Rs.3,75,000/- per month, from July, 1991 and all service benefits from the date he joined service till his date of retirement.
- (iii) To quash as illegal, Notification No.200/GEN/DOP, dated 06.02.2019, issued by the Respondent No.1.

**2.** The facts germane to the Petitioner's case is that, on 22-06-1988, on the recommendation of the Sikkim Public Service Commission (SPSC), he was appointed to the post of Consultant (Cardiology), Grade II, in the Health and Family Welfare Department, Government of Sikkim, on a monthly salary of ₹

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3,450/- in the pay scale of ₹ 3450-125-4700 and other allowances as admissible under the Sikkim Government Service Rules, with effect from 14-06-1988, vide Office Order bearing No.1769/G/EST. During the course of his service, he held the post of Director General of Health Service, re-designated as Director General-cum-Secretary, Health Care, Human Services and Family Welfare Department. His services were extended variously on 25-07-2016, 31-08-2017 and 25-08-2018, till he retired on superannuation on 31-08-2019.

**(i)** The grievance of the Petitioner pivots around Notifications No.158/GEN/DOP, dated 19-12-2018 (Notification of 2018) and No.200/GEN/DOP, dated 06-02-2019 (Notification of 2019). The Notification of 2018, extended the incentive of Super Speciality and Performance Allowance (SSPA), to doctors who were appointed as "*Consultant, Selection Grade II*", with effect from the "*date of joining service*". The other requisites for obtaining the said incentive are delineated in the said Notification and shall be discussed hereinafter. The apple of discord arose on the issuance of the Notification of 2019, vide which the Notification of 2018 was modified, by substituting the words "*with effect from the date of joining service*" in the Notification of 2018, to, "*with effect from the date of issue of Notification*" by the Notification of 2019.

**(ii)** Earlier, on issuance of Notification of 2018, the Petitioner on 21-01-2019, processed an official noting to the Government of Sikkim, claiming SSPA of Rs.2,00,000/- per month, from June, 1988 to June, 1991 and thereafter Rs.3,75,000/- per month, till his retirement, claiming to have joined as Consultant, Grade II, in June, 1988, on completion of his Doctorate of Medicine (DM) and having completed three years experience as a Super





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Specialist in June, 1991, serving in the Government of Sikkim, Department of Health Care and Family Welfare. This was followed by a written representation, dated 23-04-2019, to the Commissioner-cum-Secretary of the same department, requesting him to consider his Office Note (*supra*). In response thereto, the Special Secretary to the Government, Health Department, vide letter dated 07-05-2019, informed the Petitioner that, he was eligible for such incentive only from 19-12-2018 to 31-01-2019.

**(iii)** Being thus aggrieved, the Petitioner on 25-02-2020 and 07-09-2020 issued legal notices, to the State-Respondents reiterating his claims for the SSPA as detailed *supra*. As his notices met with no response, on 03-10-2020 he issued a legal notice to the Chief Secretary, Government of Sikkim, referring to the two earlier legal notices and thereafter filed the Writ Petition on 24-11-2020.

**(iv)** Learned Counsel for the Petitioner, while reiterating the factual aspects detailed hereinabove, contended that, the denial of the benefit of SSPA, that had accrued to the Petitioner under Notification of 2018 is against the principles of natural justice. That, the act of the State-Respondents violates the fundamental rights of the Petitioner guaranteed under Articles 14, 16, 39(d) and 43 of the Constitution of India, besides being arbitrary, illegal and lacking cogent reasons. That apart, at the time of his appointment he was the only Cardiologist in the State and thereby rendered indispensable service to the people of the State. That, the Notification of 2018 allows the SSPA even to the existing members of the "Sikkim State Health Service" (SSHS), if the necessary qualifications are met, as in the case of the Petitioner. The Notification of 2019 is an attempt to forfeit the



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Petitioner's rights and hence ought to be quashed. To fortify her submissions, reliance was placed on ***Punjab State Cooperative Agricultural Development Bank Limited vs. Registrar, Cooperative Societies and Others***<sup>1</sup>, ***Chairman, Railway Board and Others vs. C.R. Rangadhamaiah and Others***<sup>2</sup> and ***State of Rajasthan and Others vs. Mahendra Nath Sharma***<sup>3</sup>. That, the reliefs sought for be granted and necessary directions be issued to the State-Respondents in this context.

**3.** Contesting the claims of the Petitioner, the State-Respondents averred that, the Notification of 2018, makes it evident that the SSPA was granted prospectively by the Government, to doctors on appointment as Consultant, Selection Grade II with the requisite minimum qualifications and experience as enumerated in the Notification. That, it can be inferred from the contents of the Notification that, the incentive was only for future appointments and did not relate to doctors already appointed. That, on receipt of the official noting processed by the Petitioner claiming the SSPA, the State-Respondents became aware of the Petitioner's misinterpretation of the Notification of 2018. To clarify the conundrum, a subsequent Notification of 2019 was issued by the State-Respondent No.1, partially modifying the Notification of 2018, making it effective from the "*date of issuance of Notification*" and not from the "*date of joining service*" as earlier detailed in Notification of 2018. That, the Notification of 2018 has to be read in its entirety to understand its object and purpose. That, it is settled law that a Notification cannot have retrospective effect, consequently, the Notification of 2018 has no retrospective effect

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<sup>1</sup> (2022) 4 SCC 363

<sup>2</sup> (1997) 6 SCC 633

<sup>3</sup> (2015) 9 SCC 540



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for the Petitioner to base his claims. Reliance was placed on **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited<sup>4</sup>** to buttress this submission. It was ultimately argued that, in any event, the Notification of 2018 was in fact not even published in the Government Gazette thereby making the incentive void *ab initio* and *non-est*.

**4.** On the anvil of the averments in the pleadings, the rival arguments advanced and perusal of the documents, this Court is to consider and determine;

- (a) Whether the Petitioner is entitled to the SSPA of Rs.2,00,000/- per month, from June, 1988 to June, 1991 and thereafter Rs.3,75,000/- per month, till date of his retirement, in terms of the Notification bearing No.158/GEN/DOP, dated 19-12-2018;
- (b) Whether the Notification of 2018 applies retrospectively; and
- (c) Whether Notification No.200/GEN/DOP, dated 06-02-2019, deserves to be quashed.

**(i)** These points being interconnected are taken up together for discussion and determination. To obtain a clear picture of the grievances of the Petitioner, in the first instance Notification bearing No.158/GEN/DOP, dated 19-12-2018, is to be examined holistically. It is extracted in its entirety hereinbelow for clarity;

“.....  
**GOVERNMENT OF SIKKIM**  
**DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS,**  
**TRAINING AND PUBLIC GRIEVANCES**  
**GANGTOK**

No: ..158../GEN/DOP

Dated: 19/12/18

**NOTIFICATION**

The State Government is hereby pleased to grant incentive to doctors on appointment as Consultant, Selection Grade II with minimum qualification as Doctorate of Medicine (DM) or

<sup>4</sup> (2015) 1 SCC 1



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*Magister Chirurgiae* (M. Ch.) from a recognized Medical College strictly as per norms of Medical Council of India (MCI) through direct recruitment in the Sikkim State Specialist wing of the Sikkim State Health Service under Health Care, Human Services and Family Welfare Department, Government of Sikkim as Super Speciality and Performance Allowance with effect from the date of joining service, as under; namely:-

- (i) Super Speciality and Performance Allowance for the doctors having clinical teaching experience of more than 03 (three) years as Specialist: Rs.3,75,000/- per month.
- (ii) Super Speciality and Performance Allowance for the doctors having clinical teaching experience as Specialist of less than 03 (three) years : Rs.2,00,000/- per month.

2. The Super Speciality and Performance Allowance shall be in addition to existing pay and allowances applicable to the posts in the appropriate grade scale of pay under the relevant rules and shall be extendable to the members of teaching faculty of the Medical Colleges under the Government of Sikkim. The entitlement of the Allowance is subject to fulfillment of following terms, namely:-

(i) The Allowance is automatically added at the time of initial appointment with effect from the date of joining service. Those joining with less than 03 (three) years experience with Rs.2,00,000/- lakhs per month Super Speciality and Performance Allowance will be entitled for enhancement to Rs.3,75,000/- lakhs per month on completion of 03 (three) years experience.

(ii) For the grant of Super Speciality Performance Allowance, period of experience in clinical and teaching field while rendering super speciality service shall be reckoned. Therefore, the candidates from General Duty and Public Health Wing who joins the rank by mode of absorption on acquirement of Post-Doctorate degrees shall also be entitled for Super Speciality and Performance Allowance on acquirement of required experience as Super Specialist.

(iii) The Allowance is admissible to the existing members of the Sikkim State Health Service subject to accessible experience.

(iv) This Allowance is subject to review by Super Speciality Board/competent authorities from time to time.

**By order and in the name of the Governor.**

**Sd/-**

**(SIPORAH G. TARGAIN, SCS)  
SPECIAL SECRETARY TO THE GOVERNMENT**

....."

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5. While breaking down the Notification for clear comprehension, it emanates that the State-Respondents sought to grant;

- (i) the incentive of SSPA to doctors on appointment as Consultant, Selection Grade II;
- (ii) the requisite minimum qualification to obtain the allowance was Doctorate of Medicine (DM) or *Magister Chirurgiae* (M. Ch.) from a recognized Medical College strictly as per norms of Medical Council of India (MCI);
- (iii) the doctor was to have been directly recruited in the Sikkim State Specialist Wing (SSSW) of the SSHS under Health Care, Human Services and Family Welfare Department, Government of Sikkim;
- (iv) **the allowance as SSPA would be effective from the date of joining service;**
- (v) **SSPA of Rs.3,75,000/- per month** was to be granted to those **doctors having clinical teaching experience as specialist for more than 03 (three) years;**
- (vi) **SSPA of Rs.2,00,000/- per month** was to be granted to doctors with **clinical teaching experience as specialist of less than 03 (three) years;**
- (vii) the SSPA would be in addition to existing pay and allowances applicable to the posts in the appropriate grade scale of pay under the relevant rules;
- (viii) the SSPA was also extendable to the members of teaching faculty of the Medical Colleges under the Government of Sikkim subject to fulfillment of the following terms;



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- (ix) the SSPA would automatically be added at the time of initial appointment with effect from the date of joining service;
- (x) those joining service as teaching faculty with less than 03 (three) years experience, would draw Rs.2,00,000/- per month as SSPA;
- (xi) they would be entitled to enhancement to Rs.3,75,000/- per month on completion of 03 (three) years experience;
- (xii) **for the grant of SSPA, the period of experience in clinical and teaching field, while rendering super speciality service would be reckoned;**
- (xiii) candidates from General Duty and Public Health Wing who join the rank by mode of absorption on acquiring Post-Doctorate degrees and required experience as Super Specialist would also be entitled to the SSPA;
- (xiv) **the existing members of the SSHS, subject to accessible (sic) experience were also entitled to the SSPA;**
- (xv) however, the SSPA is subject to review by Super Speciality Board/competent authorities from time to time.

**6.** The Notification as already extracted above, indicates the requisite parameters and integral qualifications crucial for the obtainment of the allowance.

**(i)** On 06-02-2019, vide a second Notification, the Notification of 2018 *supra* was modified as follows;

“.....

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DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS,  
TRAINING AND PUBLIC GRIEVANCES**



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Dated: 6/2/19

**NOTIFICATION**

In partial modification to Notification Number:158/GEN/DOP, dated:19/12/2018, in para 1, **after the word "Performance allowance", for the words "with effect from the date of joining service" the following words "with effect from the date of issue of Notification" shall be substituted.**

By order and in the name of the Governor.

Sd/-

**(Tenzing Gelek)IAS**

**COMMISSIONER-CUM-SECRETARY TO THE GOVERNMENT  
DEPARTMENT OF PERSONNEL, ADMINISTRATIVE REFORMS,  
TRAINING AND PUBLIC GRIEVANCES**

....." [emphasis supplied]

The Notification of 2019 was clarificatory, making the SSPA effective prospectively, by specifying that the entitlement for the allowance would be from the date of issuance of Notification of 2018 and not from the date of joining service as had been mentioned therein.

7. The above details having emerged from the two Notifications under consideration, the Order of appointment of the Petitioner, dated 22-06-1988, is next to be considered, which is extracted hereinbelow and reads as follows;

**"GOVERNMENT OF SIKKIM  
ESTABLISHMENT DEPARTMENT,  
GANGTOK**

O. O. NO: 1769/G/EST. DATED GANGTOK, THE 22/6/ NE,88

**OFFICE ORDER**

Dr. Kumar Bhandari, M.D. (Med), D. M. (Cardiology) is hereby appointed in a temporary capacity to the post of **Consultant (Cardiology) in the Health & Family Welfare Department on a monthly pay of Rs. 3450/- in the scale of Rs.3450-125-4700** plus other allowances admissible under the Sikkim Government Service Rules with effect from 14.6.88 on the recommendation of Sikkim Public Service Commission.

2. The terms of appointment are as follows:-
- (i) He shall be on probation for one year.



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(ii) The appointment is temporary and may be terminated at any time by 30 days' notice given by either side, viz. the appointing authority on the appointee, without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to \_\_\_\_\_(illegible) sum equivalent to pay and allowances for the period of notice or the \_\_\_\_\_(illegible) expired portion thereof.

(iii) The appointment carries with it the liability to serve in any part of Sikkim.

(iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time.

3. The appointment shall be treated as fresh appointment and the past services rendered by him shall be counted for the purpose of retirement benefits only in accordance with the relevant rules contained in the Sikkim Government (Retirement Benefits) Rules, 1974 as amended from time to time and as stipulated in Office Memorandum No.387/Gen/Est dated 13.\_\_\_\_\_(illegible).88.

Sd/- (D. K. Gazmer)  
ADDL. SECRETARY TO THE GOVT. OF SIKKIM  
ESTABLISHMENT DEPARTMENT

....." [emphasis supplied]

The terms of his appointment are self-explanatory but it is worth noting that the Office Order does not mention that the appointment was in Grade II as claimed by the Petitioner.

**8.** That having been said, in the first instance, it is essential to notice that there is no dispute with regard to the educational qualification of the Petitioner and his claim of being a Doctorate of Medicine (DM). This is one of the requisite qualifications to claim eligibility for the SSPA. It may be remarked here that, although no documents to fortify the claim of the Petitioner that, he qualified as a Doctorate of Medicine (Cardiology), from King George's Medical College, Lucknow, India, in the year 1987 have been submitted for perusal of this Court,

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nonetheless, in the absence of any contest from the State-Respondents on this facet, it follows by implication that the State-Respondents concede to his educational qualification and accept his averments in this context. In such circumstances, no further discussions need ensue on the point of the Petitioner's educational qualification.

**9.** From the order of appointment of the Petitioner, it manifest that he was a direct recruit to the post of Consultant (Cardiology) in the Health and Family Welfare Department, in the aforesaid monthly pay of ₹ 3,450/-, in the scale of ₹ 3450-125-4700, plus other allowances admissible under the Sikkim Government Service Rules with effect from 14-06-1988. The State-Respondents had contended that the incentive as per the Notification of 2018 was only for "future appointments" and did not relate to doctors already appointed. This appears to be an erroneous submission by the State-Respondents, for the reason that, the Notification of 2018 clearly lays down at Serial no.2(iii) that, the allowance is admissible to the existing members of the SSHS, which thereby brings within its ambit doctors who were appointed in the SSHS and not only those doctors directly recruited in the SSSW of the SSHS. On this point, this Court takes judicial notice of the fact that Notification bearing No. J (35)/22/Gen/Est., dated 29-06-1993, provided for rules to be called the "Sikkim State Health Service Rules, 1993" (Rules of 1993). Rule 4 (I) and (2) of the Rules of 1993, provides as follows;

**"4. MEMBER OF THE SERVICE.—**

(I) All persons possessing minimum qualification of Bachelor of Medicine & Bachelor of Surgery or Bachelor of Dental Surgery from a recognized University appointed on substantive or regular temporary basis other than those who have been appointed on contract or on deputation, holding a





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duty post, shall be the member of the Service at the initial constitution of the Service on the appointed day.

**(2) All persons having minimum qualification of Post Graduate degree/diploma from a recognized University in the concerned Speciality appointed on substantive or regular temporary basis other than those who have been appointed on deputation or on contract basis holding duty post shall be members of the Service at the initial constitution of the Service on the appointed day.** [emphasis supplied]

The “appointed day” as appears in the Rules of 1993 (*supra*) would be April 26<sup>th</sup> 1975, as laid down in Article 371F of the Constitution of India. Therefore, in light of the provision of the Notification of 2018, the Petitioner having been appointed on 26<sup>th</sup> June, 1988 and the Rules of 1993 (*supra*) being effective from the appointed day, it stands to reason that he is a member of the SSHS. The allowance is admissible to the existing members of the SSHS “*subject to accessible (sic) experience*”, the issuance of the Notification of 2019, modifying the Notification of 2018, does not change the fact that the existing members of the SSHS were eligible for the SSPA, on acquisition of the requisite educational and other qualifications.

**(i)** Pausing here momentarily, for a slight digression, which nevertheless is relevant, the Petitioner by filing an additional document sought to bring on record that, when he was appointed there was no “Health Cadre” and no use of the term “Grade”, although the scale that he was appointed to was equivalent to “Consultant Grade II” in the “Cadre” formed later in 1993. Relevantly, the Petitioner had made no averment in this context. Secondly, the additional document which is a certificate issued by the Secretary to the Government, Department of Personnel, Government of Sikkim, bearing No.1204/GEN/DOP, dated 04-03-2024, while explaining that the term “Grade” was not used at the

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time of the Petitioner's appointment has failed to explain that "Consultant Grade II" and "Selection Grade II" are one and the same post, drawing equivalent scales of pay. This discussion arises for the reason that the Petitioner has claimed the SSPA from June, 1988 @ Rs.2,00,000/- per month till June, 1991 and thereafter @ Rs.3,75,000/- per month, till his date of retirement, without specifying the reasons as to why he would be entitled to the allowance from the date of his appointment in June, 1988. The additional document does not clarify the conundrum regarding *Grade II scale of pay* and "*Selection*" *Grade II scale of pay* and this Court is not inclined to draw assumptions in the absence of clarification.

**(ii)** In *Bharat Singh and Others* vs. *State of Haryana and Others*<sup>5</sup>, the Supreme Court while considering whether a point can be substantiated without particulars or facts having been averred in the Writ Petition observed as follows;

**"13. ....If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point.** In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. **So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."**

[emphasis supplied]

**10.** Similarly, in light of the foregoing discussions and the absence of any proof to establish the claims of the Petitioner for SSPA from June, 1988, his claim appears to be devoid of merit.

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<sup>5</sup> (1988) 4 SCC 534

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**11.** The Notification of 2018 lays down the next requirement for obtaining of SSPA, which is the requirement of "*clinical teaching experience as specialist*". It was averred in the Petition and argued by the Learned Counsel for the Petitioner that since the Petitioner had joined as a Consultant Grade II after completion of the course of Doctorate of Medicine (DM), in June 1988, he thus completed his "three years experience" as a Super Specialist in the Sikkim Government, Department of Health and Family Welfare in June, 1991. Indeed, he may have well attained three years "experience" as a super specialist, but the Petitioner has completely overlooked the fact that, the Notification mandates "*clinical teaching experience as specialist*". No document was furnished by the Petitioner by way of proof to establish that he had any clinical teaching experience, much less of more than three years or for that matter less than three years, to qualify him to claim the amounts specified in the Serial no.2(i) and 2(ii) of the Notification of 2018. "*Clinical teaching experience*" is an altogether different concept and qualification from "*service experience*" and the two are definitely not analogous. At this juncture, it is worth noticing that even in the Petitioner's Note, dated 21-01-2019, he makes no mention whatsoever of having acquired teaching experience. The Note *inter alia* reads as hereunder;

".....  
The undersigned has joined as Consultant Gr. II after Doctorate of Medicine (DM)/Cardiology (Super Speciality) in June, 1988 and in June 1991 completed **his three years experience as a Super Specialist serving in the Sikkim Government, Department of Health Care & Family Welfare.** Considering these facts, the undersigned would be entitled to Rs.2,00,000/- per month incentive from June 1988 to June 1991 and henceforth, an incentive of Rs.3,75,000/- per month thereafter till date.

....."  
[emphasis supplied]

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Teaching experience is imperative as can be gauged from Serial no.2(ii) of the Notification of 2018, where it has categorically been expounded that the period of experience in clinical teaching field, while rendering Super Speciality service, "*shall be reckoned*" and even candidates from General Duty and Public Health Wing who join the rank, after acquisition of degrees are expected to have clinical and teaching experience. The Petitioner by being a Doctorate of Medicine but *sans* clinical teaching experience, falls short of the prescribed criteria to draw the Super Speciality and Performance Allowance envisaged vide the Notification *supra*. On pain of repetition it emanates with crystal clarity that the Notification of 2018 prescribes specific requisite qualifications to be eligible for the SSPA. It does not grant the Petitioner a choice or recourse to alternatives of such qualifications. Should he fall short of one of the required qualifications, he would surely not be entitled to the SSPA.

**12.** The letter dated 07-05-2019 addressed to the Petitioner by the Special Secretary to the Government of Sikkim, Department of Health Care, Human Services and Family Welfare, reveals that, despite the above circumstances, the Petitioner was afforded the SSPA with effect from 19-12-2018 to 31-01-2019, which in my considered opinion he was not entitled to, in view of the fact that he was not qualified in terms of the said Notification. Nevertheless as averred by the State-Respondents in Paragraph 28 of their Counter-Affidavit, it appears that although the Petitioner was found eligible for the allowance for the aforementioned period and the process of settlement was underway but it was not claimed by the Petitioner, hence no orders regarding reimbursement or otherwise are necessary.

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**13.** While canvassing the point of amendment of the Notification of 2018 and the injustice thereby meted out, Learned Counsel for the Petitioner had strongly relied on ***Punjab State Cooperative Agricultural Development Bank Limited (supra)***, where the Supreme Court had referred to the decisions of ***Roshan Lal Tandon vs. Union of India and Another***<sup>6</sup>, ***B. S. Vadera vs. Union of India and Others***<sup>7</sup> and ***State of Gujarat and Another vs. Raman Lal Keshav Lal Soni and Others***<sup>8</sup>, wherein it had been held that an amendment having retrospective operation, which has the effect of taking away a benefit already available to the employee, under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. Indeed, the law has thus been laid down, however even if the Notification of 2019 is struck down, the indubitable fact that remains is that, the Petitioner does not qualify for the SSPA by reason of his lack of teaching experience as already discussed above in prolixity. Besides, the Supreme Court in ***Union of India and Another vs. Narendra Singh***<sup>9</sup>, while considering an Appeal where the Respondent had been erroneously promoted as a Senior Accountant, which went unnoticed for about four years and on realization of such an error the mistake was sought to be rectified. The Supreme Court held that;

**"32.** It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. **But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K. Suryanarayan [(1997) 6 SCC 766] it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be**

<sup>6</sup> AIR 1967 SC 1889

<sup>7</sup> AIR 1969 SC 118

<sup>8</sup> (1983) 2 SCC 33

<sup>9</sup> (2008) 2 SCC 750







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**prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules.”** [emphasis supplied]

It is but human to err and the Notification of 2019 is proof of the fact that such error had occurred, which was sought to be and was rectified by the State-Respondents. The fact that it was an error is discernible from the act of the Government, which vide the Notification of 2019, rectified the Notification of 2018 within a month and fortnight of its issuance. There is no hard and fast law that mandates that even if an error has been made inadvertently by the Government, it must continue to act on such error, as seen from the pronouncement in **Narendra Singh (supra)**.

**14.** Learned Government Advocate for the State-Respondents, had ultimately augmented his arguments by contending that in fact the Notification of 2018 has not even been published in the Government Gazette and thereby is devoid of legal force. If such be the circumstance, it would set to naught the concept of the SSPA and all that is portrayed therein, thereby depriving all persons who have withdrawn such amounts *sans* such publication. In **Rajendra Agricultural University vs. Ashok Kumar Prasad and Others**<sup>10</sup>, the issues involved in the Appeals were whether a statute made under Section 36 of the Bihar Universities Act, 1987, providing for a benefit to the teaching staff for which assent had been given by the Chancellor could be enforced in the absence of publication in the official gazette, the Supreme Court referred to **B. K. Srinivasan and Others vs. State of Karnataka and Others**<sup>11</sup>, wherein it was *inter alia* observed that;

**“15.** ..... We know that delegated or subordinate legislation is all-pervasive and that

<sup>10</sup> (2010) 1 SCC 730

<sup>11</sup> (1987) 1 SCC 658



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there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. **It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.** .....” [emphasis supplied]

In other words, the Supreme Court was of the view that subordinate legislation ought necessarily to be published whether such publication or promulgation is prescribed by the parent statute or not. In **B. K. Srinivasan** (*supra*) the Supreme Court had also observed that;

**“15.** ..... Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. **If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the official gazette or some other reasonable mode of publication.** There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.” [emphasis supplied]

The Supreme Court has therefore lucidly propounded that subordinate legislation has to be published through the customarily recognized official channel, namely the official gazette or some other reasonable mode for it to be applicable.

**15.** A Division Bench of this Court in **Basanti Rai and Others** vs. **State of Sikkim and Others**<sup>12</sup>, where the Petitioners had questioned the legality and validity of the Sikkim Succession Act, 2008, under Notification No.22/LD/P/2008, dated 24-07-2008, of

<sup>12</sup> 2017 SCC OnLine Sikk 123



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the Law Department, Government of Sikkim (Annexure P-2), whereunder the women married outside Sikkim were deprived of their rights to their ancestral property. The State Government in its reply stated that the Act is on paper only and has not yet been notified, as required, to bring the same into force and the Petition is pre-mature. This Court held as follows;

**"4.** On examining the reply filed by the respondents-State, it is evident that the Sikkim Succession Act, 2008 is not yet enforced, the same having not been notified as yet. Consequently, Orders, if any, passed by the Authorities, in terms of the provisions of the Sikkim Succession Act, 2008, are declared null and void *ab initio*. Examination of the validity of an enactment, which is non-existent, is not required, as it is pre-mature. ...."

The aforementioned legal stances would render the Notification of 2018 void *ab initio*, however this point was not averred by the State-Respondents and the argument was raised rather belatedly. Suffice it to note that the State-Respondents have been totally lackadaisical and remiss about including such an important aspect in their averments. Notwithstanding this argument, it is apparent that the State-Respondents have themselves acted upon the Notification of 2018 to grant certain amount of the SSPA to the Petitioner i.e., from 19-12-2018 to 31-01-2019. Besides, no documentary evidence to fortify the argument of non-publication of the Notification of 2018 has been placed before this Court.

**16.** In the end result, for the reasons enumerated above, the Petitioner is not entitled to the SSPA and his claims are devoid of merit. In view of the rectification of the Notification of 2018 by that of 2019, the question on retrospectivity receives a quietus.

**17.** Also, for the foregoing reasons, this Court is not inclined to quash the Notification of 2019.

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**18.** The Writ Petition stands dismissed and disposed of accordingly.

**19.** Pending applications, if any, also stand disposed of.

**20.** No orders as to cost.

**( Meenakshi Madan Rai )**  
**Judge**

27-08-2024

Approved for reporting : **Yes**