

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extraordinary Jurisdiction)

-----  
**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
-----

**I.A. No.2 of 2019**  
**in**  
**WP(C) No. 45 of 2018**

Shri Arun Chettri,  
Son of Lal Bahadur Chettri,  
Resident of Lower Marchak Ranipool,  
East Sikkim.

..... Petitioner

**Versus**

1. State of Sikkim  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok.
2. Sikkim Public Service Commission,  
Through its Secretary,  
Old Tourism Complex,  
M.G. Marg,  
Gangtok, Sikkim – 737101.
3. Department of Personnel, Administrative Reforms,  
& Training and Public Grievances,  
Through its Secretary,  
Gangtok, Sikkim 737101.
4. Mr. Aswin Nirola,  
Son of Mrs. Geeta Nirola (Assistant Professor),  
Near Government Girls Hostel,  
Gairigoan, Tadong,  
P.O Daragoan,  
P.S. Gangtok.  
East Sikkim.
5. Dipendra Adhikari,  
Son of Shri Kapil Mani Sharma,  
Resident of Upper Lasso,  
P.O. Tashiding, Sinek,  
P.S. Tashiding,  
West Sikkim.

..... Respondents

**Application under Order I Rule 10(2) of the Code of Civil Procedure, 1908.**  
-----

**Appearance:**

Mr. Tashi N. Basi, Advocate for the Petitioner.

Ms Yeshi W. Rinchen, Government Advocate for the Respondents no.1 and 3.

Mr. J.B. Pradhan, Senior Advocate with Mr. Bhusan Nepal, Advocate for the respondent no.2.

Mr. N. Rai, Senior Advocate with Ms Sushmita Gurung, Advocate for the respondent no.4.

Mr. Zangpo Sherpa, Advocate for the respondent no.5.

-----

**ORDER (oral)**

26.08.2020

**Bhaskar Raj Pradhan, J.**

**1.** An application under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (CPC) has been preferred by the respondent no.4 seeking a direction to strike out his name from the array of parties in WP(C) No. 45 of 2018.

**2.** It is the contention of the respondent no.4 that after he was successful in the competitive examination and interview he had been appointed to the post of Assistant Engineer (Civil) vide office memorandum dated 31.01.2019. However, during the pendency of the writ petition, he has since resigned from the post of Under Secretary, Commerce and Industry Department, which was accepted by the Government of Sikkim vide office order no. 5799/G/DOP dated 16.02.2019. Thus, it is contended that with the acceptance of the resignation, the contention challenging the

appointment and holding of the office has ceased to exist as against him.

**3.** In his reply, the petitioner contends that the respondent no.4 is an essential party for effectually adjudicating the writ petition. However, Mr. Tashi N. Basi, learned counsel for the petitioner, fairly submits that if the respondent no.4 assures that he would have no grievance against the outcome of the present writ petition, the application under Order I Rule 10(2) CPC may be allowed and the name of the respondent no.4 may be deleted.

**4.** Mr. N. Rai, learned Senior Counsel appearing for the respondent no.4, categorically states that if his name is deleted from the array of respondents in the present writ petition, his client would have no grievance on the outcome of the writ petition.

**5.** In the writ petition, the petitioner has prayed for the following:-

- “(i) commanding/directing the respondent authorities to establish fair and competent committee of experts to examine the ‘official answer key’ for the subject of Public Administration & Management and Indian History;
- (ii) commanding/directing the Respondent No.2 to re-evaluate the ‘OMR’ sheet of the petitioner for the question nos. 1, 4, 10, 11, 29 and 74 of Public Administration &

Management and question nos. 12, 28, 50 and 54 of Indian History on the basis of new 'official answer key' as finalized by the committee appointed/approved by this Hon'ble Court;

- (iii) commanding/directing the Respondent No.2 to grant marks for question no (*sic*) 15 in Indian History paper to the Petitioner as announced by Respondent no. 2 at the time of the examination.
- (iv) commanding/directing the Respondent No.2 to cancel/quash the modified 'Statement in order of merit of candidates selected for Viva-voce/Interview for the post of Under Secretary 2017' and modified 'Original statement of marks obtained by the candidates of OBC (SL) category in Main(s) Written Examination and Viva-Voce/Interview for the post of Under Secretary and equivalent 2017'
- (v) commanding/directing the Respondent No.2 to prepare fresh 'Statement in order of merit of candidates selected for Viva-Voce/Interview for the post of Under Secretary 2017' and 'Original statement of marks obtained by the candidates of OBC (SL) category in Main(s) Written Examination and Viva-Voce/Interview for the post of Under Secretary and equivalent 2017'
- (vi) commanding/directing the Respondent No.2 to appoint the Petitioner on the post of Under Secretary in the equivalent post and seniority as other appointees as notified in Notice dated 01.12.2017 bearing Ref. No. 45/EXAM/SPSC/2017 as per the new rank attained by the petitioner; and
- (vii) commanding/directing the respondents No.3 to cancel the appointment letter dated 13.01.2018 issued to the respondent no.4 for the post of Junior Grade of the Sikkim State Civil Service.
- (viii) commanding/directing any other order or orders as this Hon'ble Court deems it fit and proper in the interest of justice.
- (ix) Further, it is prayed that pending disposal of the Writ the Hon'ble Court may direct the respondent authorities to refrain from issuing any new appointment order in the OBC(SL) category for the post in Junior Grade Sikkim State Civil Service as Under

Secretary and equivalent in the interest of Justice.”

6. It is an admitted fact that the respondent no.4, who had been appointed pursuant to the examination which is under challenge, has since resigned and his resignation has been duly accepted. In view of the same, the respondent no.4 would have no grievance if any of the prayers as prayed for by the petitioner is granted in favour of the petitioner, prayer (vii) becoming infructuous.

7. In view of the categorical submissions and statements made by the learned counsel for the contesting parties and due to the change in circumstances of the respondent no.4, the application filed by the respondent no.4 is allowed.

8. Consequently, the registry is directed to delete the name of the respondent no.4 from the array of respondents.

9. The application stands disposed of.

( **Bhaskar Raj Pradhan** )  
**Judge**

Approved for reporting : **No**  
Internet : **Yes**

bp