

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

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

WP(C) No.79 of 2025

Petitioner : Gyanandra Chettri

versus

Respondents : State of Sikkim and Another

Application under Article 226 of the Constitution of India

Appearance

Mr. Rahul Rathi, Advocate for the Petitioner.

Ms. Pema Bhutia, Assistant Government Advocate for the Respondent No.1.

Mr. Aarohi Bhalla, Advocate with Mr. Bhusan Nepal, Advocate for the Respondent No.2.

Date of hearing : 10-12-2025

Judgment pronounced : 10-12-2025

Judgment uploaded : 11-12-2025

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The prayers in the instant Writ Petition *inter alia* are as follows;

“(a)

(b) Issue an appropriate writ, order/direction declaring the action of the Respondent No.2 in not considering the no objection certificate submitted by the Petitioner till production of discharge book and ex-servicemen card is illegal, arbitrary and unjust;

(c) Issue an appropriate writ, order/direction upon the Respondent No.2 to consider the no objection certificate submitted by the Petitioner till the production of discharge book and ex-servicemen card which may be obtained by the Petitioner on the date of his retirement;

(d) Issue a writ of certiorari or any other appropriate writ quashing the notice bearing no.55/SPSC/EXAM/2025, dated 20-09-2025 as the same cannot override the initial notice bearing reference no.82/EXAM/SPSC/2025, dated 26-11-2025 which was advertised for filling up the vacancy and the initial notice did not state anything about the requirement of discharge book and ex-

servicemen card and as such the notice bearing reference no. 55/SPSC/EXAM/2025, dated 20-09-2025 is illegal and unlawful;

(e) Pass an ad-interim order directing the Respondent No.2 not fill in the position of the said one post of Sub Inspector reserved for Ex-servicemen OBC(SL) in which the Petitioner have (sic) already qualified till the pendency of the instant writ petition;

(f)"

2. Learned Counsel for the Petitioner submits that consequent upon the advertisement bearing No.14/SPSC/EXAM/2025, dated 20-05-2025, issued by the Sikkim Public Service Commission (SPSC), Respondent No.2, inviting applications from eligible local candidates for filling up of thirty-nine (39) posts of Sub-Inspector, the Petitioner applied thereto, in the reserved category for "Ex-Servicemen (ESM) Other Backward Classes (OBC) State List (SL)". The Preliminary Examination was conducted on 21-09-2025 in which the Petitioner was permitted to take the examination. It is clarified by Learned Counsel for the Petitioner that vide a Notice dated 20-09-2025 the Petitioner was to submit his documents, viz., Discharge Book, Ex-Servicemen (ESM) ID Card. The requirement of these documents was made known to the candidate only on 20-09-2025, i.e., one day before the Petitioner was permitted to and appeared for the Preliminary Examination on 21-09-2025, after scrutiny of the documents. On 24-09-2025 the Petitioner appeared before the Respondent No.2 for scrutiny of his documents in terms of the Notice dated 20-09-2025. On 26-09-2025, the results of the Preliminary Examination was declared by the Respondent No.2, wherein the Petitioner qualified. The requisite Physical Endurance Test (PET) was held on 14-10-2025 in which the Petitioner was again successful as evident from the result published on 17-10-2025. On 08-11-2025 and 09-

11-2025 the Petitioner took the final examination for the advertised post. On 26-11-2025, the final examination results were declared. The Petitioner had successfully cleared the examination and his name appeared in the Merit List. After such declaration, the Respondent No.2 required the Petitioner to appear for scrutinising the documents in terms of the Employment Advertisement dated 20-05-2025 (*supra*). On 29-11-2025, the Petitioner was requested verbally by the Respondent No.2 to produce the Discharge Book, Ex-Servicemen (ESM) ID Card. In compliance thereto, the relevant documents were submitted by the Petitioner. On scrutiny, the Respondent No.2 informed him that he was not eligible for the said post in view of the said documents. Aggrieved, the Petitioner on 01-12-2025 submitted a representation to the SPSC Chairman stating that the Discharge Book and Ex-Servicemen (ESM) ID Card would be issued only after retirement but that he had been issued a "No Objection Certificate" (NOC) from the Indian Navy enabling him to take the examination, which had been accepted and considered by the Respondent No.2. The Petitioner requested that he be allowed to produce the same after his date of retirement, i.e., 31-01-2026. It is the specific submission of the Learned Counsel for the Petitioner that vide the Notice, Reference No.82/EXAM/SPSC/2025, dated 26-11-2025, the Petitioner was declared qualified in order of merit and his name appeared in the list of qualified candidates at Sl. No.37 against Roll No.259. After the Petitioner was permitted to appear for three stages of examinations, the Respondent No.2 cannot after scrutinising the documents which were also sought for rather belatedly, declare the Petitioner to be ineligible for the advertised post. Hence, the prayers in the Writ Petition.

3. *Per contra*, it was submitted by Learned Counsel appearing for the Respondent No.2 that the Petitioner was not in the first instance eligible to apply for the said post in view of the fact that he was not an Ex-Servicemen (ESM). The NOC submitted by the Petitioner clearly specifies that he is eligible to take up civil employment after 31-01-2026 which is the date on which he is due to be released from the Indian Navy. That, the Certificate also reflects that the Office had no objection to the registration of the sailor's name with the Employment Exchange but does not reflect any permission for him to apply for any civil employment at that stage.

4. Learned Assistant Government Advocate for the Respondent No.1 had no submissions to advance.

5. I have heard the rival contentions advanced by Learned Counsel for the parties and perused the pleadings and all documents relied on by the Petitioner.

6. Before embarking on a discussion on the merits of the matter it would be apposite to record here that, on 08-12-2025 this Court had directed the Respondent No.2 to take steps with regard to the representation filed by the Petitioner and reach a determination on the representation. Today, it is submitted by Learned Counsel for the Respondent No.2 that the contentions raised in the representation have been duly examined and on consideration of all facts and circumstances, it has been rejected by the Respondent No.2.

7. Having given due consideration to the rival contentions, it is indeed a rather unfortunate situation that the Petitioner finds himself at this juncture, however, I cannot refrain from observing that in the first instance he was not eligible to have even applied

for the post. The Advertisement dated 20-05-2025 of the Respondent No.2 specifies *inter alia* that reservation exists for the posts advertised, for "Sports Persons, Artisans of Excellence (SPAЕ) or Ex-Servicemen (ESM)". In my considered view and understanding, the Petitioner was not an Ex-Servicemen (ESM) when he applied for the post. The NOC submitted by him clearly specifies *inter alia* that "..... This is to certify that Name :**GYANANDRA CHETTRI**, Rank **PO M**, No.**226254 R** is due to be released from the Indian Navy on **31-01-2026**. He is eligible to take up civil employment after this date.". It is clear that at the time of the Advertisement he was still in service and was consequently, on pain of repetition, not eligible to apply for the advertised posts as an Ex-Servicemen (ESM). Although Learned Counsel for the Petitioner vehemently argued that Notification of the Government of India, dated 27-10-1986, defines an Ex-Servicemen, these Rules, I find, would not be applicable to the facts and circumstances of the instant case as the very name of the Rule suggests, i.e., Ex-Servicemen (Re-employment in Central Civil Services and Posts) Amendment Rules, 1986. In any event, even this Rule defines Ex-Servicemen as follows;

- "2.
- (c) 'Ex-servicemen' means a person, who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces; and"
-"

The term "Ex-Servicemen" therefore applies to a person who has "served" in the various Armed Forces and is not a person who is still serving therein. Thus, the Petitioner being in service still and

due to retire only on 31-01-2026, by no stretch of the imagination falls within the ambit of the definition.

(i) It was also argued by Learned Counsel for the Petitioner that Rule 22 of the "Manual for the Sikkim Public Service Commission, 2018," does not detail any scrutiny after the applications are received. Regardless of such Rules, this Court finds that the documents filed by the Petitioner indicates that on 20-09-2025, vide Notice No.55/SPSC/EXAM/2025, it has been clearly specified *inter alia* that *the scrutiny of credentials of all candidates applying under the category of Sports Persons & Artisans of Excellence & Ex Servicemen for the post of Sub Inspector, Sikkim Police as advertised vide Advertisement No.14/SPSC/EXAM/2025 Issued Date: 20/05/2025 is hereby scheduled in the Office of the Commission on 24/09/2025 (from 11:00 am onwards).*

(ii) Over and above, the Paragraph (*supra*), it has also been specified *inter alia* that *admission to all the stages of examination for which candidates are admitted by the Commission viz. Written Examination and scrutiny of documents shall be purely provisional subject to their satisfying the prescribed eligibility conditions. If on verification at any point of time, before or after the Written Examination and scrutiny of document, it is found that they do not fulfil any of the eligibility conditions; their candidature for the examination/post will be summarily rejected by the Commission.* This Notice has not been assailed.

(iii) In fact, on perusing the documents filed on by the Petitioner, I find that vide Notice bearing No. No.47/SPSC/EXAM/2025, dated 14-08-2025, it has been clarified that admission to all the stages of examination for which candidates are admitted by the

Commission shall be "purely provisional", subject to their satisfying the prescribed eligibility conditions. More importantly, the Notice reflects that, *if on verification at any point of time before or after the Written Examination, Physical Endurance Test and scrutiny of documents, it is found that they do not fulfil any of the eligibility conditions, their candidature for the examination/post will be summarily rejected by the Commission.* This Notice too is unassailed.

8. In light of all the facts and circumstances and documents discussed hereinabove as also the conditions spelt out therein, I am of the considered view that the Petitioner was at the time of the Advertisement not eligible to apply for the post in the reserved category of Ex-Servicemen (ESM) for the simple reason that he was not an Ex-Servicemen. He was in service. Merely because he would retire on 31-01-2026 that contingency would not render him eligible to apply for the posts advertised and in the said quota. The NOC issued by the concerned Authority where he was employed also permits him to take up civil employment after the date of retirement. Although it was claimed by the Petitioner that the error committed by the Respondent No.2 ought not to work in their favour by the same reasoning, the error of making an application by the Petitioner in a quota for which he was ineligible at that juncture cannot work in his favour.

9. For the foregoing reasons, the Writ Petition deserves to be and is accordingly dismissed.

10. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)

Judge

10-12-2025