

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.A. No. 03 of 2024

Dr. K. Bhandari,
aged about 66 years,
Son of late Tika Ram Bhandari,
Resident of Balwakhani,
Gangtok, Sikkim,
Pin – 737101.Appellant

versus

- 1. State of Sikkim,
Through the Secretary,
Department of Personnel, Administrative Reforms,
Training and Public Grievances,
Government of Sikkim,
Gangtok, Sikkim,
Pin- 737102.
- 2. Department of Health Care and Family Welfare,
Through the Secretary,
Government of Sikkim,
Gangtok, Sikkim,
Pin: 737102. Respondents

**Appeal under Chapter V Rule 148 of the Sikkim High Court
(Practice and Procedure) Rules, 2011**

[against the impugned judgment dated 27th August, 2024 passed by the learned
Single Judge in W.P.(C) No. 39 of 2020 in the matter of
Dr. K. Bhandari vs. State of Sikkim & Another]

Appearance:

Ms Laxmi Chakraborty, Advocate for the Appellant.
Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay
Dorjee Bhutia, Government Advocate for the Respondents No. 1 and 2.

J U D G M E N T

(7th August, 2025)

Bhaskar Raj Pradhan, J.

The short question that arises for consideration before this Court is whether the appellant/petitioner is entitled to Super Speciality and Performance Allowance (for short, the Allowance) 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 notification bearing no. 158/GEN/DOP dated 19.12.2018 (for short, notification dated 19.12.2018)?

2. The learned Single Judge concluded that the appellant was not entitled to the Allowance. It was also held that in view of the rectification of the notification dated 19.12.2018 by notification bearing no. 200/GEN/DOP dated 06.02.2019 (for short, notification dated 06.02.2019), the question on retrospectivity received a quietus.

3. Unsatisfied with the impugned judgment, the appellant raises the question once again for an appellate determination.

4. Heard the learned counsel for the appellant as well as the respondents. The learned counsel for the appellant submits that in terms of the notification dated 19.12.2018, the petitioner is entitled to the Allowance as sought for. Paragraph 2 (iii) of notification dated 19.12.2018 makes the Allowance admissible to the petitioner as he was an existing member of the Sikkim State Health Service with requisite experience. The learned counsel for the respondents submits that the impugned judgment does not suffer from perversity or errors apparent on the face of the record.

5. The appellant contends he obtained MBBS Degree from King George's Medical College, Lucknow in the year 1981; he completed Master of Medicine (Medicine) in 1985 and thereafter completed D.M. (Cardiology) from King George's Medical College in 1987; the appellant was appointed in the year 1988 as Consultant (Cardiology) in the Health & Family Welfare Department; on 08.06.2011, the State re-designated the post of the appellant from Director General of Health Service to that of Director General-cum-Secretary, Health Care & Human Services and Family Welfare Department; his service was extended on 25.07.2016, 31.08.2017 and 25.08.2018; and retired on superannuation on 31.08.2019.

6. After the issuance of notification dated 19.12.2018, the appellant on 21.01.2019 processed an official noting to the Government of Sikkim claiming the Allowance of Rs.2,00,000/- per month, from June 1988 to June 1991 and thereafter, Rs.3,75,000/- per month, till his retirement. On 23.04.2019, the appellant made a written representation to the Commissioner-cum-Secretary of the Department of Health Care, Health Services and Family Welfare, Government of Sikkim, requesting him to consider his office note. In response, vide letter dated 07.05.2019, the Special Secretary informed the appellant that he was eligible for such Allowance only from 19.12.2018 to 31.01.2019. The appellant issued several legal notices and thereafter, filed the writ petition on 24.11.2020, which was considered and dismissed by the learned Single Judge.

7. The notification dated 19.12.2018 reads as under:

**“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 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

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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 fulfilment 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

.....”

8. The notification dated 06.02.2019 reads as under:

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

No: 200/GEN/DOP

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

.....”

9. Notification dated 19.12.2018 indicates that:

- a) it was an incentive scheme envisaged by the Government.
- b) the incentive was to grant Allowance to doctors on appointment as Consultant, Selection Grade-II with minimum qualification as Doctorate of Medicine (DM) or *Magister Chirurgiae* (M.Ch.) from a recognized Medical College strictly as per norms of Medical Council of India.
- c) the appointment envisaged in the notification dated 19.12.2018 was through direct recruitment

in the Sikkim State Specialist Wing of the Sikkim State Health Service.

d) the amount of Allowance offered was higher (i.e, Rs.3,75,000/- per month) for doctors having clinical/ teaching experience of more than 3 years as Specialist.

e) the amount of Allowance offered was lesser (i.e, Rs.2,00,000/- per month) for doctors having clinical/teaching experience as Specialist of less than 3 years.

f) the Allowance was to be in addition to the existing pay and allowances applicable to the post in the appropriate grade scale of pay and was extendable to members of teaching faculty of Medical Colleges under the Government of Sikkim.

g) the entitlement of the Allowance was subject to fulfilment of the following terms, namely:-

- (i) The Allowance was to be automatically added at the time of initial appointment with effect from the date of joining service.
- (ii) The period of experience in clinical and teaching field while rendering super speciality service was to be reckoned. Therefore, the candidates from

General Duty and Public Health Wing who joins the rank by mode of absorption or acquirement of Post-Doctorate degrees shall also be entitled for the Allowance on acquirement of required experience as Super Specialist.

- (iii) The Allowance was admissible to the existing members of Sikkim State Health Service subject to accessible experience.
- (iv) The Allowance was subject to review by Super Speciality Board/competent authorities from time to time.

10. The notification dated 19.12.2018 was prospective in nature. It was not made retrospective either by explicit words or by implication.

11. The notification dated 19.12.2018, when on its plain language postulated prospective operation, it cannot be treated to be operative retrospectively. More so, when the notification dated 19.12.2018 postulates financial benefits to the eligible incumbents.

12. The State is entitled to make policy decisions and policy decisions are prospective in nature unless made explicitly retrospective.

13. The notification dated 06.02.2019 partially modified the notification dated 19.12.2018 replacing the words “with effect from the date of joining service” with the words “with effect from the date of issue of Notification”. The learned Single Judge has held that the notification was clarificatory in nature and we do not seek to differ from that view.

14. The letter dated 07.05.2019 informed the appellant that he was eligible for such incentive only from 19.12.2018 to 31.01.2019. This was the stand taken by the State in its counter as well. 19.12.2018 was the date of notification granting incentive to the doctors and 31.01.2019 was the date of the petitioner’s superannuation. Therefore, the stand of the respondents that the petitioner was eligible to get the Allowance for the period was correct.

15. Notification dated 19.12.2018 makes the allowance admissible to the existing members of the Sikkim State Health Service subject to accessible experience. It, however, does not make the incentive applicable retrospectively to grant the Allowance to existing members of the Sikkim State Health Service who had obtained the requisite experience much prior to the issuance of the

notification dated 19.12.2018. It was a policy decision taken by the Government, conceived at that point of time, when the notification dated 19.12.2018 was issued.

16. The learned Single Judge while examining the issues also examined Rule 4(1) and (2) of the Sikkim State Health Service Rules, 1993 and observed that the words “*appointed day*” as appears in the said Rule would be April 26, 1975, as laid down in Article 371F of the Constitution of India. With respect, the observation has been made without examining Rule 2(a) of the Sikkim State Health Service Rules, 1993 which defines the words “*appointed day*”. According to Rule 2(a), the “*appointed day*” would be “*the date from which the provisions of these rules come into force*”. Since, the Sikkim State Health Service Rules, 1993 was published in the Sikkim Government Gazette on 18.10.1993 that would be the “*appointed day*” as per Rule 1(2). Therefore, it would not be possible for us to concur with the findings of the learned Single Judge made pursuant to the above observation.

17. The notification dated 19.12.2018, being prospective in nature, we find it unnecessary to examine the various issues raised by the parties and examined by the

learned Single Judge with regard to the petitioner's grade or clinical/teaching experience as a Specialist prior to his entitlement. The respondents have themselves agreed and granted the Allowance to the petitioner prospectively. However, we are in agreement with the learned Single Judge that the petitioner was not entitled to the Allowance retrospectively.

18. We, therefore, see no reason to interfere with the impugned judgment rendered by the learned Single Judge as in an intra-Court writ appeal, the Appellate Court must restrain itself and interference with the judgment passed by the learned Single Judge is permissible only if the judgment of the learned Single Judge is palpably perverse or suffers from an error apparent in law. We find no such palpable perversity or error apparent in law.

19. Accordingly, the writ appeal stands dismissed.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

Approved for reporting: **Yes**
Internet: **Yes**

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