

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. 9 OF 2022

Tseten Palzor Bhutia,
S/o Mr. Tseten Tashi Bhutia,
R/o Shyari,
Gangtok,
Sikkim – 737101.

..... Appellant

Versus

1. State of Sikkim,
Through the Secretary-cum-Commissioner,
Department of Personnel, ADM. Reforms,
Training and Public Grievances,
Government of Sikkim,
Gangtok, Sikkim – 737101.
2. Sikkim Public Service Commission,
Through the Secretary,
Old Tourism Complex,
Gangtok, Sikkim – 737101.
3. Director General of Police,
State Police Headquarters,
NH 10,
Gangtok, Sikkim – 737101.
4. Rinzing Chopel Rai,
Son of Shri Santa Bir Rai,
Resident of Shiv Mandir Road,
Chandmari,
Gangtok, Sikkim – 737101.

..... Respondents

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

[against the impugned judgment dated 27th June, 2022 passed by the learned Single Judge in WP(C) No. 10 of 2020 (Tseten Palzor Bhutia vs. State of Sikkim & Others)]

Appearance:

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Ms Neha Kumari Gupta and Ms Laxmi Khawas, Advocates for the Appellant.

Mr. Aarohi Bhalla, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondents no.1 and 3.

Mr. Bhusan Nepal, Advocate for the Respondent No.2.

Mr. D.K. Siwakoti, Advocate for the Respondent No.4.

J U D G M E N T

(7th August, 2025)

Bhaskar Raj Pradhan, J.

The present writ appeal challenges the impugned judgment dated 27.06.2022 passed by the learned single Judge of this Court in Writ Petition (C) No. 10 of 2020.

2. The appellant had preferred the writ petition assailing the offer of appointment dated 10.05.2016 made to the respondent No. 4 and the appointment order dated 25.06.2016 appointing the respondent no.4 as Deputy Superintendent of Police.

3. The appellant further prayed for setting aside notification no. 106/Gen/DOP dated 02.08.2016 by which the respondent no.4 had been placed at serial no.69 while he was placed at serial no.70 in the inter-se seniority list. The appellant prayed that necessary corrections be made in

the Office Order dated 03.09.2019, by which the appellant and the respondent no.4 were promoted to the posts of Additional Superintendent of Police by placing the respondent no.4 at serial no.1 instead of the appellant. The appellant further prayed that the respondents be refrained from taking steps on the Office Order dated 03.09.2019 and a fresh seniority list be published with necessary rectification.

4. The relevant facts necessary for deciding the present writ appeal are: on 12.09.2012, the respondent no.2 - the Sikkim Public Service Commission (for short, the SPSC), issued an advertisement for filling up 25 posts of Under Secretaries and equivalent, in the Junior Grade of the Sikkim State Civil Service (for short, the SSCS). On 27.11.2012, by an addendum thereto, two posts of Deputy Superintendent of Police were also included. There was no mention of either a panel list or waiting list. The appellant as well as the respondent no.4 along with other candidates appeared for the preliminary examination conducted by the SPSC on 20.07.2014 and the main examinations from 23.02.2015 to 26.02.2015. A combined merit list was prepared thereafter on the marks obtained in the written examination and viva-voce for the posts of Under Secretary

as well as Deputy Superintendent of Police for the year 2015. In the merit list, one Barbara Lama with total marks of 475 featured just before the respondent no.4 whose total marks was 474. The appellant with 467 marks was 7(seven) places below the respondent no.4. The SPSC published the names of selected candidates vide notice dated 09.06.2015. For the posts of Deputy Superintendent of Police, Ms Barbara Lama, was selected in the unreserved category while the appellant was selected in the reserved category of Bhutia/Lepcha (for short, BL) as per the reservation policy. The notice dated 09.06.2015 issued to the candidates who were recommended for appointment specified that their candidature was provisional subject to police verification, medical fitness and verification of all required documents by the State Government. Barbara Lama, however, was not appointed to the post on the ground that she was not entitled to the Certificate of Identification. The appellant upon receipt of his appointment vide Office Order dated 09.11.2015 joined training at the North Eastern Police Academy, Meghalaya from January 2016. His appointment vide Office Order dated 09.11.2025 stated that his inter-se seniority would be maintained as per the order of merit declared by the SPSC vide its notice no. 93/SPSC/2015 dated 09.06.2015. According to the appellant, he later came

to learn of the appointment of the respondent No.4 in the post of Deputy Superintendent of Police vide Office Order dated 25.06.2016 and of the notification dated 02.08.2016, whereby in the inter-se seniority list of the Sikkim State Police Service (for short, the SSPS), respondent no.4 was placed at serial no.69 while he was placed at serial no.70, thereby making him junior to respondent no.4. The appellant then submitted a representation to the respondent no.1 on 24.10.2017. However, in response, the respondent no.1 informed him vide memorandum dated 07.04.2018 that his prayer could not be considered as the inter-se seniority was determined on merit based on the exam result declared by the SPSC. Unsatisfied, the appellant filed the writ petition on 06.03.2020.

5. The SPSC and the respondent no.4, filed their respective counter-affidavits disputing the averments in the writ petition. The respondent no.2 contended that the candidature of respondent no.4 for the post of Deputy Superintendent of Police was against the post notified for the unreserved category while the appellant was selected in a reserved category. It is contended that the petitioner had no *locus standi* to challenge the appointment of respondent no.4. The respondent no.2 in addition also clarified that the

select list of candidates is not the merit list as erroneously interpreted by the appellant.

6. On examination of the pleadings exchanged by the parties as well as oral hearing, the learned Single Judge concluded that the appointment of the respondent no.4 on account of the cancelled candidature of Barbara Lama was legal even in the absence of any panel list. The learned Single Judge also opined that the inter-se seniority between the appellant and the respondent no.4 was required to be determined under Rule 4(c) of the Sikkim State Services (Regulation of Seniority) Rules, 1980 under which the seniority of members of the service who are recruited on the result of the competitive examination in any year shall be ranked inter-se in the order of merit in which their names appear in the result of that competitive examination; those recorded on the basis of the earlier examination shall rank senior to those on the basis of later examination. The learned Single Judge was of the considered view that the bare reading of the notice dated 09.06.2015 issued by the SPSC makes it clear that the list of selected candidates was only provisional and their selection was subject to the conditions laid down in the last paragraph thereto. Hence, if any candidates did not fulfil any of the conditions their

candidature would be cancelled. The learned Single Judge also held that although the inter-se seniority was settled on 02.08.2016, the appellant made a representation only on 24.10.2017 which was rejected by the Government respondent vide memorandum dated 07.04.2018 and approached the Court on 06.03.2020 after a lapse of one year and ten months with no reasons advanced for the delay.

7. The writ appeal reiterates all the grounds taken in the writ petition. It is contended that the appellant was offered appointment to the post of Deputy Superintendent of Police vide memorandum dated 06.10.2015 while the respondent no.4 was appointed vide Office Order dated 25.06.2016. As such, the appellant ought to be senior to the respondent no.4. It is also reiterated that the respondent no.4 had made a representation before the respondent no.1 to appoint him to any of the two vacant posts as Barbara Lama had been disqualified and Mega Nidhi Dahal did not accept the offer of appointment. This representation was not entertained by the respondent no.1 as there was no panel list in the notice dated 09.06.2015. It was only when the respondent no.4 preferred a writ petition before this Court that the respondent no.1 issued the appointment order in

his favour. The learned Senior Counsel for the appellant submits that as Barbara Lama had been recommended for appointment as per the merit list, the merit list would have no relevance thereafter. Any appointment made for the post due to the vacancy created by non-appointment of Barbara Lama ought to be through a new recruitment process as there was no provision for a waiting list or a panel list. As the merit list had exhausted itself, the seniority of the respondent no.4 could not be reckoned from a retrospective date when he was not even born in the cadre. The appellant contends that the learned Single Judge has failed to follow the dicta of the Hon'ble Supreme Court in **Vallampati Sathish Babu vs. State of Andhra Pradesh and Ors.**¹. Relying upon the judgment of the Hon'ble Supreme Court in **Official Liquidator vs. Dayanand & Ors.**², the appellant contends that the law laid down by the Hon'ble Supreme Court is binding on all Courts. He also relied upon the judgment of the Hon'ble Supreme Court in **Bihar State Electricity Board vs. Suresh Prasad**³. The learned Senior Counsel also contends that when arguable points of fact and law are involved, hyper technical view of delay and laches should not be taken.

¹ (2022) 13 SCC 193

² (2008) 10 SCC 1

³ (2004) 2 SCC 681

8. In **Dayanand** (supra), the Hon'ble Supreme Court held that by virtue of Article 141, the judgment of the Constitutional Bench is binding on all Courts including the Supreme Court till the same is overruled.

9. In **Vallampati (supra)**, the appellant therein had participated in the selection process for recruitment of teachers when 33 posts were notified and recruitment process initiated. The appointments were governed by the Andhra Pradesh Direct Recruitment for the post of Teachers (Scheme of Selection) Rules, 2012 (2012 Rules). Rule 16 thereof provided for preparation of selection list; sub-rule 5 of Rule 16 provided that number of candidates selected shall not be more than number of vacancies notified. It also provided that there shall be no waiting list and posts, if any, unfilled for any reason whatsoever shall be carried forward for future recruitment. The appellant participated in the selection process and was placed at 34th position. The respondents declared that candidates upto serial no.33, i.e., notified vacancies in the merit list are being selected and invited them for counselling. One candidate who secured 18th rank did not turn up for counselling on the scheduled date. Consequently, one post in general category remained unfilled due to non-participation of the candidate who

secured 18th rank. The appellant made a representation seeking consideration of his candidature relying upon guidelines issued. He was not offered employment. Ultimately, the matter travelled to the Hon'ble Supreme Court. The question decided was whether the appellant was entitled to be appointed to the post which remained unfilled due to one selected candidate not appearing for counselling. On consideration of Rule 16 of the 2012 Rules read with the guidelines it was held that once the final selection list is prepared, there shall be no waiting list and posts, if any, are unfilled for any reason whatsoever shall be carried forward for further recruitment as per sub-rule (5) of rule 16 of the 2012 Rules.

10. In **Suresh Prasad** (supra), by an advertisement the board (the appellant) notified 100 vacant posts of operators. Written test and interviews were held. However, due to certain reasons, the board issued a fresh advertisement cancelling the previous advertisement and calling for applications for filling up 50 posts of operators. This advertisement was challenged in a writ petition. The High Court directed the board to fill up 50% of the vacancies from amongst the candidates who had applied pursuant to the first advertisement and the remaining vacancies from the

candidates who had applied pursuant to the subsequent advertisement. The board notified the selection of 22 candidates pursuant to the first advertisement and 25 candidates pursuant to the subsequent advertisement. However, out of the 22 candidates only 4 joined and 18 did not turn up. The 18 vacancies remained unfilled. Thereafter, 7 respondents who had applied pursuant to the first advertisement and had qualified in the written test and oral interviews and were on the merit list at serial number 23 and downwards approached High Court contending that since 18 out of 22 selected had not joined, the 7 respondents should be given appointment. The High Court granted the relief. The board filed an appeal which was allowed by the Division Bench of the Hon'ble Supreme Court. A review petition was thereafter allowed and the order of the Division Bench was recalled. The appeal came up again before the Hon'ble Supreme Court. The Hon'ble Supreme Court opined that in the case a panel of 22 candidates were prepared for appointment under the first advertisement and the 7 respondents fell beyond the cut off number. There are no statutory recruitment rules which required the board to prepare the waiting list in addition to the panel. No rule was shown in support of the respondents' arguments that when 18 candidates failed to turn up, the

appellant was bound to offer the posts to candidates in the waiting list. It was held that there was no infirmity in the judgment sought to be reviewed and there was no need to recall the same.

11. The facts of the present case and the relevant law considered are different from the facts and law decided in **Vallampati (supra)** and **Suresh Prasad (supra)**, and therefore, the ratio therein, inapplicable.

12. The advertisement for the posts was issued on 12.09.2012. Invitation was made for 25 posts in the Sikkim State Civil Service. On 27.12.2012, by an addendum to the advertisement issued on 12.09.2012, two posts of Deputy Superintendent of Police were included for combined examination. It was specified that roster point 01 was for unreserved category and roster point 02 was for BL category. Pursuant to the advertisement, the candidates appeared for written examination and viva-voce for the posts of Under Secretary as well as the posts of Deputy Superintendent of Police. Thereafter, the SPSC prepared the merit list in which Barbara Lama topped the merit list in the unreserved category for the post of Deputy Superintendent of Police. The respondent no.4 featured next only to Barbara Lama in the merit list but as there was only one post advertised for

unreserved category Barbara Lama was recommended for appointment subject to verification. The appellant on the other hand was selected for the singular post reserved for the BL category. Barbara Lama and the appellant were recommended for appointment to the two posts of Deputy Superintendent of Police as unreserved candidate and BL candidate respectively vide notice dated 09.06.2015. This notice specified that their candidature was provisional subject to police verification, medical fitness and verification of required documents by the State Government. During the process of verification of the candidates recommended for appointment, Barbara Lama was found unfit and the recommendation withdrawn. In the meanwhile, the appellant was issued memorandum dated 06.10.2015 offering appointment to the post of Deputy Superintendent of Police. Thereafter, Office Order dated 09.11.2015 was issued to the appellant appointing him as Deputy Superintendent of Police.

13. The appointment of the respondent No.4 was not an easy one. In the year 2015, the respondent no.4 had to approach this Court by filing a writ petition for his non-appointment seeking a direction to recommend his name as per the merit list prepared by the SPSC. The State

respondents initially resisted the writ petition. However, on 12.05.2016, this Court held the writ petition to be infructuous as the State respondents issued memorandum dated 10.05.2016 offering him appointment to the post of Deputy Superintendent of Police.

14. It is, therefore, clear that the process of recruitment which was initiated in the year 2012 had not been completed when respondent no.4 was appointed in the year 2016. The appellant as well as respondent no.4 had appeared in the same written examination and viva-voce pursuant to which the combined merit list prepared by the SPSC reflected that the respondent no.4 was above the appellant on merits. The appointment of the respondent no.4 as Deputy Superintendent of Police in the unreserved category cannot be questioned as he had successfully appeared in the written examination and viva-voce and featured in the merit list prepared by the SPSC. More so by the Petitioner who belonged to the BL category. Rule 4(c) of the Sikkim State Services (Regulation of Seniority) Rules, 1980, mandates that the inter-se seniority between the appellant and the respondent no.4 would be determined as per the order of merit in the merit list. As respondent no.4 featured above the appellant in the merit list, the seniority

list dated 02.08.2016 in which the appellant is placed at serial no.69 followed by the appellant at serial no.70 cannot also be questioned. The lack of a panel list makes no difference as the process of recruitment had not been completed when the respondent no.4 was appointed. As both the appellant and the respondent no.4 were selected through the same selection process, the issuance of the appointment order of the appellant before the respondent no.4 makes no difference as Rule 4(c) of the Sikkim State Services (Regulation of Seniority) Rules, 1980 required their inter-se seniority to be determined as per the order of merit and not from their date of appointment. This is not a case of the respondent no.4 having been granted backdated notional seniority. It is also not a case of retrospective seniority given to the respondent no.4 from a date when he was not born in the cadre. Contrary to the submission of the appellant, the merit list in which the respondent no.4 featured above the appellant was as per the recommendation of the SPSC. It is also not a case of irregular appointment of the respondent no.4 as suggested. The various judgments cited by the learned Senior Counsel to support the above submissions have been examined and found irrelevant as the facts of the present case are completely different.

15. The writ petition was filed on 06.03.2020. It sought setting aside of memorandum dated 10.05.2016; Office Order dated 25.06.2016; inter-se seniority list dated 02.08.2016 and correction of Office Order dated 03.09.2019. The writ petition did not give any explanation to the delay in filing the writ petition by making a statement that it did not suffer from delay and laches. By memorandum dated 10.05.2016, the respondent no.4 was recommended for appointment as Deputy Superintendent of Police and he was appointed vide Office Order dated 25.06.2016. The inter-se seniority between the appellant and the respondent no.4 was also determined vide notification dated 02.08.2016. The Office Order dated 03.09.2019, was an order promoting both the appellant as well as the respondent no.4 as Additional Superintendent of Police in officiating capacity which would not confer any right for regular promotion. Therefore, the main grievance of the appellant stems from orders passed in the year 2016 which was challenged in the year 2020. The learned Single Judge has examined this question of delay and laches at length by examining various judgments of the Hon'ble Supreme Court. It has been held that a person's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the insistence of a party who has during the

intervening period opted to remain silent. The inter-se seniority list which was settled on 02.08.2016 was represented against only on 24.10.2017 by the appellant and although the Government respondent vide memorandum dated 07.04.2018 rejected the representation, the appellant approached this Court only on 06.03.2020. Even when the respondent no.4 filed his writ petition in the year 2015, the appellant did not seek a stay of the appointment of the respondent no.4 to the post of Deputy Superintendent of Police and the legal notice was issued only on 11.02.2019, without giving any reasons as to the delay. It has been held that the respondent no.4 was not a usurper to a public office but in fact, a victim of circumstances and therefore, the argument that the doctrine of delay and laches is inapplicable while adjudicating on the issuance of a writ of *quo warranto* is of no relevance. In the circumstances, we do not differ from the view taken by the learned Single Judge that the writ petition is also rendered nugatory on account of delay and laches.

16. In an intra-Court writ appeal, the Appellate Court must restrain itself and the interference into 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.

17. Accordingly, the writ appeal stands dismissed.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

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

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