

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra-Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

W.P. (C) No. 11 of 2023

Mr. Kishore Thapa,

Son of Late P.B. Thapa,
Resident of Majhitar,
Rangpo, East Sikkim,
Presently working as BDO,
Rakdong-Tinkek, East Sikkim-737107.

... **Petitioner**

Versus

1. **STATE OF SIKKIM,**

Represented through the Secretary,
Health Care, Human Services & Family Welfare
Department, Government of Sikkim, Gangtok,
East Sikkim-737101.

2. **DEPARTMENT OF PERSONNEL,**

Administrative Reforms and Training,
Represented through the Secretary,
Government of Sikkim,
Gangtok, East Sikkim-737101.

... **Respondents**

Appearance:

Dr. (Mrs.) Doma T. Bhutia, Senior Advocate with Ms. K.D. Bhutia,
Advocate, for the Petitioner.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. S.K.
Chettri, Government Advocate, Mr. Mohan Sharma and Mr.
Bhaichung Bhutia, Advocates and Ms. Neera Thapa, Law Officer, for
the Respondents.

Date of Hearing : 25.05.2026

Date of Judgment : 28.05.2026

Date on which uploaded : 28.05.2026

J U D G M E N T

(A. Muhamed Mustaque, C.J.)

The issue involved in the present matter lies in a narrow compass. The Petitioner seeks reckoning of his appointment as Health Educator with effect from 10.10.2001 in terms of the corrigendum dated 24.02.2009, issued by the Health & Family Welfare Department, Government of Sikkim, whereby it was specifically ordered that the Petitioner be treated as Health Educator with effect from 10.10.2001 instead of 30.09.2005.

2. It is not in dispute that the Petitioner had successfully completed the requisite diploma course in Health Education and was fully qualified for appointment/promotion to the post of Health Educator in the year 2001 itself. The Government, upon consideration of the matter, also found that the Petitioner ought to have been promoted along with others in the year 2001.

3. Though monetary benefits were subsequently extended to the Petitioner pursuant to the corrigendum, the consequential benefit of notional seniority and promotion from 10.10.2001 was not granted.

4. The complication appears to have arisen on account of the Government order issued in the year 2005 appointing the Petitioner as Health Educator as a direct recruit, despite the fact that he was already serving as a regular employee under the Department. *Prima facie*, such appointment as a direct recruit while in regular service is contrary to settled principles of service jurisprudence. True, the Petitioner did not challenge the said order at the relevant point of time; nevertheless, the same cannot operate to his prejudice in

perpetuity, particularly when no third-party or competing rights are shown to be adversely affected. The government perhaps issued such order in the light of amended rules, but it is to be noted that the government has necessary powers to the relevant rules to relax the rigour of the rule also.

5. The delay or laches on the part of the Petitioner would assume significance only where retrospective fixation of seniority is likely to disturb vested rights or affect competing interests. In the present case, no such prejudice to any other employee has been demonstrated.

6. Significantly, the Government has also never withdrawn or recalled the corrigendum dated 24.02.2009. The said corrigendum, therefore, continues to hold the field, and must be given its full effect.

7. In such circumstances, this Court is of the considered view that the Petitioner is entitled to have his appointment as Health Educator reckoned with effect from 10.10.2001 and to all consequential service benefits flowing therefrom, including re-fixation of seniority.

8. Consequently, the Respondents shall re-fix the Petitioner's seniority by treating him as Health Educator with effect from 10.10.2001 and shall thereafter consider and grant all consequential notional promotions on the dates on which he became eligible, including promotion to the post of Deputy Director.

9. The Petitioner shall, however, not be entitled to any arrears of salary or monetary benefits for the period during which he had not actually discharged duties in the promotional posts. The benefits

shall remain purely notional, except to the extent necessary for the pensionary and retiral benefits.

10. Upon such re-fixation, the case of the Petitioner for promotion to the post of Joint Director shall also be considered expeditiously, in accordance with law and subject to his otherwise fulfilling the requisite eligibility criteria.

11. The aforesaid exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

12. Ordered accordingly.

13. The writ petition, being, **WP (C) No.11 of 2023**, stands disposed of.

Chief Justice

Approved for Reporting: Yes/No
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