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

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

WP(C) No.47 of 2026

Ms. Smriti Chettri,
D/o Shri Chandra Bahadur Karki,
R/o 5th Mile Tadong, Lumsey Road,
Near Sai Gurukul Academy, Gangtok,
Sikkim-737102. ... **Petitioner**

versus

1. **The High Court of Sikkim,**
Through the Registrar General,
Gangtok.

2. **The Registrar General,**
High Court of Sikkim,
Gangtok-737101.

3. **The State of Sikkim,**
Through the Secretary,
Department of Law & Parliamentary Affairs,
Government of Sikkim,
Gangtok.

4.* **The Secretary,**
Department of Personnel,
Government of Sikkim,
Gangtok.

... **Respondents**

* ***Impleaded in terms of order dated 31.07.2026.***

Petition under Article 226 of the Constitution of India

Appearance:

Mr. Abhinav Kant Jha, Ms. Preeti Basnett and Ms. Angkita Giri, Advocates for the Petitioner.

Mr. N. Rai, Senior Advocate with Mr. Kazi Sangay Thupden, Ms. Prerana Rai, Ms. Srijana Bagdas, Mr. Sogyal Topden Norbu and Ms. Pritika Pradhan, Advocates for the Respondent Nos. 1 and 2.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate for the Respondent Nos.3 and 4.

Judgment Reserved on : 03.11.2026
Judgment Pronounced on : 16.11.2026
Judgment Uploaded on : 16.11.2026

JUDGMENT

(A. Muhamed Mustaque, C.J.)

1. The High Court of Sikkim on 03.11.2025 had issued an Employment Notice inviting applications for filling up one vacant post of Protocol-cum-Liaison Officer (Group 'C') (Level-8). The selection was based on the interview. The last date for submission of application was on 15.11.2025 and the date of interview was on 19.11.2025.

2. The Petitioner herein, Ms. Smriti Chhetri, had applied for the said post. However, her application was summarily rejected for want of necessary supporting document(s) indicating her work experience in protocol matters. On 18.11.2025, after the expiry of the prescribed last date for submission of applications, the Petitioner submitted the necessary documents showing her work experience.

3. The High Court vide Notice dated 01.12.2025, issued a clarification, apparently in response to the public outrage in her selection. The clarification notice stated that the Petitioner had submitted her certificates on 18.11.2025 and had been permitted to participate in the interview on 19.11.2025.

4. The High Court had published the selection list on 25.11.2025. On the basis of their respective rankings in the interview, three candidates were selected, namely: (i) Ms. Araprita Das; (ii) Ms. Smriti Chhetri and (iii) Mr. Ravi Eshan Tamang.

5. It appears that, after the interview dated 19.11.2025, the then Chief Justice of this High Court converted two posts of Lower

Division Assistant-cum-Typist (Level-8) (Group 'C') into posts of Protocol-cum-Liaison Officer vide notification dated 21.11.2025. Based on these subsequent developments, three candidates, including the Petitioner, were selected and appointed.

6. The Full Court of this High Court on 21.04.2026, decided to terminate the service of the Petitioner on the ground that she had been appointed over and above the single vacancy notified in the Employment Notice. The High Court had also issued show-cause notice, to which the Petitioner submitted her response. The High Court is of the view that the appointment of the Petitioner, being in excess of the notified vacancy is illegal and *void ab initio*.

7. Mr. Abhinav Kant Jha, Learned Counsel for the Petitioner, challenging the order of termination dated 16.07.2026, submitted that the Petitioner is innocent and was selected on the basis of merit. It is contended that merely because only one vacancy was notified, nothing prevented the High Court from accommodating the Petitioner against any subsequent vacancies that were created immediately before publication of the merit list. Learned Counsel for the Petitioner relied on several judgments of the Apex Court supporting his arguments:-

(a) ***Prem Singh and Others*** vs. ***Haryana State Electricity Board and Others***[1] wherein it was held that appointments can be made against clear and anticipated vacancies, but not against future vacancies, except in exceptional or emergent circumstances supported by a policy decision. Appointments beyond the advertised vacancies are

[1] (1996) 4 SCC 319.

ordinarily impermissible. However, considering the facts, equity and expediency the Court may mould the relief rather than invalidate all excess appointments.;

(b) ***State of J&K and Others*** vs. ***Sanjeev Kumar and Others***[2] where it was observed that the Government could, through a policy decision, appoint candidates from the waiting list, considering both existing and anticipated vacancies, as recognised in Prem Singh *(supra)*.;

(c) ***Oryx Fisheries Private Limited*** vs. ***Union of India and Others***[3] wherein it was held that an authority issuing a show-cause notice must act with an open mind and must not prejudge the guilt of the person concerned. The person must be given a genuine opportunity to defend themselves. If the authority has already formed an opinion of guilt, the proceedings violate the principles of natural justice. Further, quasi-judicial authorities must give proper reasons for their decisions.;

(d) ***Siraj Ahmad*** vs. ***State of Uttar Pradesh and Another***[4] wherein it was established that an irregular appointment is not necessarily an illegal appointment.;

(e) ***Pankjeshwar Sharma and Others*** vs***. State of Jammu and Kashmir and Others***[5] wherein it

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[2] (2005) 4 SCC 148.
[3] (2010) 13 SCC 427.
[4] (2020) 19 SCC 480.
[5] (2021) 2 SCC 188.

was held that appointments must ordinarily follow the prescribed recruitment rules and merit list. However, considering exceptional circumstances, long years of service and the bona fide intention of the State, the appointments of the candidates were not disturbed.; and

(f) ***Pawan Kumar Tiwary and Others*** vs. ***Jharkhand State Electricity Board (now Jharkhand Urja Vikas Nigam Limited) and Others***[6] wherein it was held that administrative mistakes should not prejudice innocent employees, that principles of natural justice must be followed before terminating appointments and the doctrine of severability protects valid appointments from being cancelled along with invalid ones.

8. On the other hand, Mr. N. Rai, Learned Senior Counsel appearing for the Respondent Nos. 1 and 2, submits that the appointment itself was void and illegal. It is further pointed out that, apart from the reasons stated in the impugned order, the appointment itself was in violation of the Rule 6 of the High Court of Sikkim (Recruitment, Conditions of Service and Conduct) Rules, 1998 (hereinafter referred to as, "1998 Rules"). That the 1998 Rules does not provide for any such post with the prescribed qualifications as mentioned in the employment notification. Even if such a post was created by the Chief Justice, who is empowered to create posts

[6] 2025 SCC OnLine SC 1751.

by invoking Article 229 of the Constitution of India, no sanction had been obtained from the State Government.

9. Therefore, it is further submitted that in any such illegal appointments, not stating these additional reasons, would not preclude the Respondents in canvassing such reasons in support of the termination order. That this is not a disciplinary proceeding, wherein all the grounds are required to be specifically stated in the show-cause notice, failing which it would amount to violation of the principles of natural justice. It is submitted by the Learned Senior Counsel that, in matters concerning the termination of persons appointed through illegal appointments, even the issuance of a show-cause notice is not mandatory and what is required is to demonstrate only the reasons for such termination. Learned Senior Counsel relied on the following judgments of the Apex Court: -

(a) ***State of Orissa and Others*** vs. ***Sukanti Mohapatra and Others***[7] contending that the prescribed recruitment procedure cannot be completely ignored and later regularise those appointments which were made illegally. The power to relax recruitment conditions can be exercised only in genuine public interest and for specific requirements, with proper reasons. It cannot be used as a blanket power to validate illegal appointments or destroy the rights of other candidates.;

(b) ***Secretary, State of Karnataka and Others*** vs. ***Umadevi (3) and Others***[8] contending that the employee must have been appointed against a sanctioned post and must possess the required

[7] (1993) 2 SCC 486.
[8] (2006) 4 SCC 1.

qualifications, must have followed fair and transparent recruitment procedures and cannot bypass Articles 14 and 16 of the Constitution. That no appointments could be made in contravention of statutory rules and illegal appointments cannot be made legal simply because the person had worked for many years.;

(c) ***Renu and Others*** vs. ***District and Sessions Judge, Tis Hazari Courts, Delhi and Another***[9] contending that appointments to public posts, including posts in subordinate courts, must be made through a fair, transparent and lawful recruitment process in accordance with Articles 14 and 16 of the Constitution. That no authority, including the Chief Justice, can make appointments arbitrarily.;

(d) ***Union of India and Another*** vs. ***Raghuwar Pal Singh***[10] contending that an appointment made by an officer who had no legal authority to make it, and without the prior approval of the competent authority required under the Recruitment Rules, is *void ab initio* and not merely an irregular appointment.;

(e) ***State of Bihar and Others*** vs. ***Kirti Narayan Prasad***[11]; contending that an appointment made without following the prescribed recruitment procedure and through unauthorised means is *void ab initio*.;

(f) ***Gajanan Babulal Bansode*** vs. ***State of Maharashtra and Others***[12] wherein it was held that an authority

[9] (2014) 14 SCC 50.
[10] (2018) 15 SCC 463.
[11] (2019) 13 SCC 250.
[12] (2021) 4 SCC 494.

cannot recruit candidates in excess of the number of vacancies advertised, as doing so violates Articles 14 and 16(1) of the Constitution of India, which guarantee equality and equal opportunity in public employment.

10. This is not a singular case that has come before this Court challenging the termination of the employees appointed by the administration of this High Court during the last two years on the ground of illegality. This is only one among other such cases. Therefore, this Court will have to examine this present matter not merely based on singular challenge to termination, but with reference to also in the context of the systematic illegality allegedly committed by the High Court administration over the past two years in making appointments of persons of their choice.

11. First, this Court shall examine the manner in which the Petitioner was appointed. The notified vacancy was only one. The last date for submission of application was 15.11.2025. The Petitioner's application was initially rejected for the requirement of an experience certificate. Thereafter, on 18.11.2025, she submitted the necessary experience certificate. This means that the last date for submission of application was effectively extended in her case. If at all any defect existed in the application, the same ought to have been cured before the expiry of the last date, i.e., 15.11.2025. If any application is received or any defect therein is cured, after the prescribed last date, it would violate the golden rule that the cut-off date is solemn matters of public employment and must be uniformly applied while accepting or rejecting the applications. It demonstrates that the High Court administration showed undue enthusiasm in accepting her subsequent documents after the expiry

of the cut-off date. The level playing field, which is required to be maintained on the basis of the prescribed cut-off date, has thus been breached.

12. The notified vacancy is only one. The High Court administration could not have appointed more than one candidate, even if additional vacancies were created by subsequent notifications. The Apex Court in ***Rakhi Ray and Others*** vs. ***High Court of Delhi and Others***[13], and various other judgments have opined that appointments in excess of the notified vacancies are illegal. It is appropriate to refer to the relevant paragraph:

> "……..
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> **7.** It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rationale", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law. (Vide Union of India v. Ishwar Singh Khatri, Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat, State of Bihar v. Secretariat Asstt. Successful Examinees Union 19864, Prem Singh v. Haryana SEB and Ashok Kumar v. Banking Service Recruitment Board.)
> ……."

13. Arguments of the Learned Counsel for the Petitioner that the Court can mould the relief if such a candidate is selected meritoriously in a fair and transparent procedure, have no application in this case for the following reasons:-

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[13] (2010) 2 SCC 637.

i. As noted above, the Petitioner was extended undue favour by accepting her experience certificate after the expiry of the cut-off date.

ii. Further, it is to be noted that this selection itself is vitiated as it violates Rule 6 of the 1998 Rules. This Rule prescribes that all appointments through direct recruitment shall be made on the basis of a competitive examination, as prescribed by the Chief Justice. This is a mandatory provision.

14. The Chief Justice has no power to dispense with the requirement of a competitive examination, even by invoking the residuary powers under Rule 14 or Rule 19 of the 1998 Rules. The requirement under the 1998 Rules to conduct a competitive examination is mandatory and cannot be waived in the case of appointments to Group 'C' posts and above. This demonstrates that the selection solely through a *viva-voce* clearly lacks the requisite transparency and give rise to serious concerns regarding nepotism.

15. No doubt, the Chief Justice has the power under Article 229 of the Constitution to create post(s). However, the High Court does not have financial autonomy and is required to utilize its budget in the particular manner as sanctioned by the State Government. In the matters concerning the creation of new posts, no appointments can be made against such posts without obtaining the sanction of the State Government under the relevant Rules. Rule 13 of the Sikkim Government Establishment Rules, 1974, requires prior sanction of the Government before making any appointment.

16. The entire selection procedure and the consequential appointment is therefore illegal and void. As opined by the Hon'ble

Supreme Court in ***Renu and Others*** vs. ***District and Sessions Judge (supra)***

> "……..
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> **27.** To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules, etc. for as per Section 16 of the General Clauses Act, 1897, power to appoint includes power to remove/suspend/dismiss. (Vide *Pradyat Kumar Bose* v. *High Court of Calcutta* and *Chief Justice of A.P.* v. *L.V.A. Dixitulu*) But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the statutory rules, which have to be in consonance with the scheme of our Constitution.
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> …….
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> **29.** Thus, in view of the above, the law can be summarised to the effect that the powers under Article 229(2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such rules as made by the legislature.
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> ……."

17. The High Court is the guardian of the Rule of Law. It is the last hope for the citizens of the State in their quest for justice. The High Court must demonstrate that it is a model employer. Its selection process must be fair and transparent for every post and every appointment must be made strictly in accordance with the prescribed Rules. Any deviation from the prescribed legal framework, thereby negating the Rule of Law not only amounts to subverting the law but also shakes the confidence of the people in an institution that otherwise discharges judicial functions.

18. The credibility of the institution is now at stake as a consequence of the illegal appointments and the favouritism shown to a select few. As noted above, this is not an isolated case involving the systematic flouting of rules and laws by this High Court

administration over the past two years. If such illegality is not addressed and rectified, credibility of the very institution will be called into question.

19. The plea of innocence advanced by the Learned Counsel for the Petitioner, for sympathetic consideration cannot prevail at the cost of the Rule of Law. The Petitioner's role in the process leading to her appointment cannot be overlooked, particularly when the circumstances disclose that she was a beneficiary of undue favouritism. Sympathy cannot legitimize illegality, nor can any right flow from a wrong. Those who make calculated choices must accept its consequences. The appointment in question is not merely tainted by procedural irregularities, the circumstances surrounding them raise serious concerns of impropriety that cannot be brushed aside as isolated aberrations. This is not a mere blemish on the institutional fabric, but a cancerous growth capable of eating away the very soul of this great institution. If not removed with firmness and resolve, its consequences may extend far beyond the immediate beneficiaries and corrode the institution from within.

20. Anyway, on the legal grounds discussed hereinabove, the Petitioner has no right to continue in service. She must, therefore, march out of this institution through the front door of law, as she entered into this institution through the backdoor, as revealed from the findings recorded herein. She cannot claim the legitimacy of a lawful process to remain in the institution.

21. This case, however, must not be viewed merely as the resolution of an individual dispute. It must, at the very least, serve as the starting point for a process of institutional introspection and renewal. The faith of the people in the integrity of this institution

must remain unshaken. Any illegality that has found its way into its administration must be confronted and remedied, for the sanctity of an institution lies in its unwavering commitment to the Rule of Law. Let this case mark the beginning of that institutional restoration.

22. The Petitioner was previously working in the State Government. The Petitioner's probation in this High Court has not been declared and she has not yet become a full member of the High Court service. If she has any remedy to invoke her *lien* in the previous employment, she is at liberty to do so in accordance with the law.

23. With liberty as above, this Writ Petition stands dismissed.

24. Accordingly, pending application(s), if any, also stands disposed of.

Chief Justice

Approved for Reporting : **Yes**

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