



IN THE HIGH COURT OF SIKKIM

ORDER SHEET

Writ Petition (C) No. 13 of 2008

Smt. Ratni Devi Petitioner / Appellant

Versus

Central Council for Research Respondent
in Ayurveda and Siddha & Ors.

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
01.	12.5.08	<p>Present: Mr. A.K. Upadhyaya, Sr. Advocate with Mr. S. Joshi and Ms. Manita Pradhan, Advocates for the Petitioner.</p> <p>Mr. B. Sharma, Sr. Advocate with Mr. Rajendra Upreti, Advocate for Respondents.</p> <p>...</p> <p>These two writ petitions are taken up together. They are filed by the husband and wife; both are 'Class D' employees of the respondent No. 1 i.e. the Central Council for Research in Ayurveda and Siddha.</p> <p>They are basically doing sweeping job and were recruited in 1983 and 1984 respectively. By a transfer order dated 23/30.04.2008, i.e., after many many long years they have been transferred to a Patiala Unit of the Council.</p> <p>The Council had 38 units all over India as the learned counsel for the respondents submitted, but the present plan of theirs is to</p>	<p>Oregered to order 4 u W.P(C) 12/08. hues 1st 5/08</p>



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consolidate the units into 12 units by a process of amalgamation. The learned counsel for the petitioners submits that as per rules Class III & IV workers will not be transferred except on administrative exigencies or on the request of the employee himself.

There are other rules of the Council which permit transfer for administrative reasons and these rules apply for Class IV workers also.

Although the transfer orders do not ex facie state that the transfer is for administrative exigency, yet that is neither here nor there. A mere statement, ^(or otherwise) that the transfer is for an administrative exigency will not either improve or worsen the transfer order.

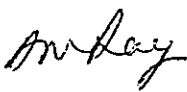
It appears that the two petitioners have three children of whom one son was employed on probation by the same council, but he lodged an FIR against his superior officer in September, 2006 and in November, 2006 the temporary employment of him was terminated. No writ was filed by him.

It is submitted that the youngest daughter of the petitioners is now taking her college examination and she is reading a BA course in Sikkim.



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		<p>The petitioners have not made any representations to the authorities, that they will join their new posting after the examination is over, say within 15 days or within 20 days or within one month, but they have come directly to the Court.</p> <p>This Writ Court does not sit in appeal over transfer matters. The FIR was filed by the son in September 2006 alleging atrocity, lodging a complaint that his superior officer said that he was not fit to sit at a chair and table, but was good only for sweeping jobs. Since trial is going on, these are now only accusations. Submissions are made that the criminal case will also ^{be} hindered if there is transfer.</p> <p>A transfer order cannot be interfered with unless mala fides can be demonstrated by cogent prima facie evidence; or unless the transfer is made for punishing the employee and the said punitive nature of the transfer order is also demonstrable on cogent evidence. None of these factors are seen here. No administrative system can run without appropriate subordination or without the freedom to work on their own, without overstepping legal limits.</p>	



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		<p data-bbox="349 396 1185 623">Learned counsel for the respondents has stated that the Patiala unit will absorb the petitioners, provided of course they go and join there.</p> <p data-bbox="349 680 1185 907">On behalf of the petitioners it was said that they might get lost on the way, if they have to go from Gangtok to Patiala. I take it as a joke, rather than an argument.</p> <p data-bbox="349 963 1185 1485">This type of petitions should be thrown out in limine. Because the petitioners are Class IV employees, I refrain from ordering any costs. The respondents are not called upon to file any affidavit in opposition. Allegations in the petitions cannot be taken to be admitted by them to any extent. The writ petitions are dismissed in limine without any order as to costs.</p> <div data-bbox="941 1485 1185 1644"> (A.N. Ray, CJ)</div>	