



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 14TH JULY, 2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(C) No.21 of 2015

- Petitioners** : 1. Mr. Lazong Bhutia,
Aged about 50 years,
S/o Late Dorjee Ongden Bhutia,
R/o Indira Bye Pass Road,
P.O. Gangtok,
P.S. Gangtok,
East Sikkim.
2. Mr. Jagannath Niroula,
Aged about 53 years,
S/o Shri Punnya Prasad Niroula,
R/o Central Pendam,
P.O. Upper Pendam,
P.S. Rangpo,
East Sikkim.
3. Mr. Lekh Nath Sharma (Dhaka),
Aged about 55 years,
S/o Late Nandalall Sharma (Dhaka),
R/o Central Pendam,
P.O. Upper Pendam,
P.S. Rangpo,
East Sikkim.
4. Mrs. Tshering Maya Tamang,
Aged about 32 years,
W/o Mr. Dhan Bahadur Tamang,
R/o Denchung,
P.O. Polok Denchung,
P.S. Jorethang,
South Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

5. Mr. Meg Nath Subba,
Aged about 49 years,
S/o Shri Tikaram Subba,
R/o Timburbong Busty,
P.O. Timburbong,
P.S. Soreng,
West Sikkim.
6. Mr. Chochen Lepcha,
Aged about 52 years,
S/o Shri Rinzing Lepcha,
R/o Phensong,
P.O. Phensong, P.S. Phodong,
North Sikkim.
7. Mr. Kaziman Basnet,
Aged about 43 years,
S/o Late Gambir Singh Basnet,
R/o Daramdin Busty,
P.O. Daramdin,
P.S. Sombaria,
West Sikkim.
8. Mr. Ganga Ram Sharma,
Aged about 45 years,
S/o Shri Yuba Prasad Neopaney,
R/o Rawtey Rumtek,
P.O. Rumtek,
P.S. Ranipool,
East Sikkim.
9. Mr. Mani Kumar Pradhan,
Aged about 49 years,
S/o Late Man Bahadur Pradhan,
R/o Daramdin Busty,
P.O. Daramdin, P.S. Sombaria,
West Sikkim.
10. Mr. Mahadeo Prasad Dhungel,
Aged about 48 years,
S/o Shri Punnya Prasad Dhungel,
R/o Central Pandam,
P.O. Central Pandam,
P.S. Rangpo,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

11. Mr. Bijoy Prasad Subba,
Aged about 49 years,
S/o Late Pratap Singh Subba,
R/o Uttarey
P.O. & P.S. Uttarey,
West Sikkim.
12. Mr. Tsewang Norbu Bhutia,
Aged about 40 years,
S/o Late Phurba Bhutia,
R/o Chandmari,
P.O. Raj Bhawan,
P.S. Gangtok,
East Sikkim.
13. Mr. Da Tshering Lepcha,
Aged about 46 years,
S/o Shri Phurjang Lepcha,
R/o Upper Kabrey Busty,
P.O. Namthang,
P.S. Namchi,
South Sikkim.
14. Ms. Pema C. Bhutia,
Aged about 35 years,
D/o Late Loday Zangpo Bhutia,
R/o Phensong,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
15. Mr. Jaslall Limboo,
Aged about 50 years,
S/o Late Till Bahadur Limboo,
R/o Gumpadara, Uttarey,
P.O. & P.S. Uttarey,
West Sikkim.
16. Mr. Kunzang Chopel Lachenpa,
Aged about 44 years,
S/o Late P.T. Lachenpa,
R/o Middle Sichey,
P.O. Gangtok,
P.S. Gangtok,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

17. Mr. Chandra Prasad Regmi,
Aged about 49 years,
S/o Shri Tula Ram Regmi,
R/o Ganchung Busty,
P.O. Pakyong,
P.S. Pakyong,
East Sikkim.
18. Mr. Chung Chuk Dorjee Bhutia,
Aged about 55 years,
S/o Late Sangay Lama,
R/o Linkey Busty,
P.O. Linkey,
P.S. Pakyong,
East Sikkim.
19. Mr. Kaching Lepcha,
Aged about 54 years,
S/o Late Nodup Lepcha,
R/o Chawang Busty,
P.O. Phamtam,
P.S. Phodong,
North Sikkim.
20. Mr. Samten Lepcha,
Aged about 47 years,
S/o Late Kadup Lepcha,
R/o Phamtam,
P.O. Phamtam,
P.S. Phodong,
North Sikkim.
21. Mr. Prem Lall Gautam,
Aged about 49 years,
S/o Shri Puspa Lall Gautam,
R/o Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.
22. Mrs. Meena Kumari Chettri,
Aged about 48 years,
W/o Prem Lall Gautam,
R/o Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

23. Mr. Som Nath Dahal,
Aged about 53 years,
S/o Late Khem Lall Dahal,
R/o Tintek Busty,
P.O. Rakdong,
P.S. Gangtok,
East Sikkim.
24. Mr. Karma Thinley Lepcha,
Aged about 50 years,
S/o Late Thendup Lepcha,
R/o Pentok Busty,
P.O. & P.S. Mangan,
North Sikkim.
25. Mr. Binod Kumar Sharma,
Aged about 53 years,
S/o Shri Punnya Prasad Sharma,
R/o Tareythang Busty,
P.O. Bering,
P.S. Pakyong,
East Sikkim.
26. Mr. Top Tshering Lepcha,
Aged about 58 years,
S/o Late Tenzong Lepcha,
R/o Chawang Mallom Busty,
P.O. Phamtam,
P.S. Phodong,
North Sikkim.
27. Mr. Kewal Prasad Nepal,
Aged about 55 years,
S/o Shri Narad Nepal,
R/o Tintek Busty,
P.O. Rakdong,
P.S. Dikchu,
East Sikkim.
28. Mr. Tulshi Prasad Dahal,
Aged about 55 years,
S/o Late Sadananda Dahal,
R/o 5th Mile Tadong,
P.O. & P.S. Tadong,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

29. Mr. Naina Kumar Rai,
Aged about 48 years,
S/o Late D.P. Rai,
R/o Assam Lingzey,
P.S. Ranipool,
East Sikkim.
30. Mr. Harka Raj Subba,
Aged about 48 years,
S/o Late Ram Sher Subba,
R/o Rumbuk,
P.O. & P.S. Sombaria,
East Sikkim.
31. Ms. Songmit Lepcha,
Aged about 36 years,
D/o Late N.T. Lepcha,
R/o Tingwong Upper Dzongu,
P.O. Tingwong,
P.S. Mangan,
North Sikkim.
32. Ms. Passangkit Lepcha,
Aged about 38 years,
D/o Shri Tashi Thendup Lepcha,
R/o Tingwong Upper Dzongu,
P.O. Tingwong,
P.S. Mangan,
North Sikkim.
33. Mr. Tsultim Pintso Bhutia,
Aged about 41 years,
S/o Late Thuten Bhutia,
R/o Upper Chandmari,
P.O. Raj Bhawan,
P.S. Gangtok,
East Sikkim.
34. Mr. Hasta Bahadur Rai,
Aged about 45 years,
S/o Jas Prasad Rai,
R/o Gaucharan Busty,
P.O. Assam Lingzey,
P.S. Ranipool,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others



35. Mr. Karma Tshering Lepcha,
Aged about 49 years,
S/o Late Nim Passang Lepcha,
R/o Kaputhang Busty,
P.O. & P.S. Pakyong,
East Sikkim.
36. Mr. Norbu Tshering Bhutia,
Aged about 53 years,
S/o Late Lha Tshering Bhutia,
R/o Ben Peku,
P.O. Ben Thalabari,
P.S. Temi,
South Sikkim.
37. Mr. Bidhan Pradhan,
Aged about 53 years,
S/o Shri Tika Ram Pradhan,
R/o Salleybong,
P.O. Phalleydara,
P.S. Namchi,
South Sikkim.
38. Mr. Lok Nath Sharma,
Aged about 51 years,
S/o Late Tila Ram Sharma,
R/o Tarku Busty,
P.O. Tarku Zero Mile,
P.S. Temi,
South Sikkim.
39. Mr. Bhim Prasad Khanal,
Aged about 46 years,
S/o Late Tika Ram Khanal,
R/o Luing Busty,
P.O. Luing, P.S. Gangtok,
East Sikkim.
40. Mr. Bhupendra Sharma,
Aged about 48 years,
S/o Dhanapati Sharma,
R/o Assam Lingzey,
P.O. Assam Lingzey,
P.S. Ranipool,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

41. Mr. Hem Bahadur Subba,
Aged about 49 years,
S/o Dhan Shor Subba,
R/o Chota Samdong Busty,
P.O. Arubotey Khaneysebong,
P.S. Soreng,
West Sikkim.
42. Ms. Ninden Lepcha,
Aged about 41 years,
D/o Late Sonam Topgay Lepcha,
R/o Ranka Barbing Busty,
P.O. Ranka,
P.S. Gangtok,
East Sikkim.
43. Mrs. Passang Kipu Lepcha,
Aged about 33 years,
W/o Nima Bhutia,
R/o Phodong Busty,
P.O. & P.S. Phodong,
North Sikkim.
44. Mr. Karma Bhutia,
Aged about 49 years,
S/o Late Sonam Bhutia,
R/o Chalamthang Busty,
P.O. Pakyong,
P.S. Pakyong,
East Sikkim.
45. Mr. Suk Bir Subba,
Aged about 46 years,
S/o Late It Man Subba,
R/o Tharpu Busty,
P.O. Tharpu,
P.S. Soreng,
West Sikkim.
46. Mrs. Sabina Limboo,
Aged about 39 years,
W/o Suk Bir Subba,
R/o Tharpu Busty,
P.O. Tharpu, P.S. Soreng,
West Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

47. Mrs. Kamala Sharma,
Aged about 50 years,
W/o Shri Gopal Sharma,
R/o Gelling Busty,
P.O. Chakung,
P.S. Naya Bazar,
West Sikkim.
48. Mr. Gopal Sharma,
Aged about 54 years,
S/o Late Yedu Kumar Sharma,
R/o Gelling Busty,
P.O. Chakung,
P.S. Naya Bazar,
West Sikkim.
49. Mrs. Somika Sharma,
Aged about 35 years,
W/o Bhawani Dhakal,
R/o Cheuribotey,
P.O. Duga,
P.S. Rangpo,
East Sikkim.
50. Mr. Dawa Tshering Lepcha,
Aged about 46 years,
S/o Late Taral Lepcha,
R/o Rupsang Busty,
P.O. Chakung,
P.S. Soreng,
West Sikkim.
51. Mr. Narayan Dass Basnett,
Aged about 49 years,
S/o Chandra Das Basnett,
R/o Chalamthang Busty,
P.O. & P.S. Pakyong,
East Sikkim.
52. Mr. Chandra Kumar Rai,
Aged about 54 years,
S/o Jahar Man Rai,
R/o Mamring Busty,
P.O. Bering, P.S. Pakyong,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

53. Mrs. Tika Sharma,
Aged about 43 years,
W/o Shri Bhupendra Sharma,
R/o Assam Lingzey Busty,
P.O. Assam Lingzey,
P.S. Ranipool,
East Sikkim.
54. Ms. Chumie Ongmu Bhutia,
Aged about 48 years,
D/o Pema Chewang Bhutia,
R/o Phensong Busty,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
55. Mrs. Jayanti Chettri,
Aged about 48 years,
W/o Mahendra Silwal,
R/o Jorethang,
P.O. & P.S. Jorethang,
South Sikkim.
56. Mr. Keshab Prasad Kaushik,
Aged about 48 years,
S/o Late D.P. Kaushik,
R/o Ranipool,
P.O. & P.S. Ranipool,
East Sikkim.
57. Mr. Tenzing Dorjee Bhutia,
Aged about 52 years,
S/o Late Gurmed Tempo Chopel Bhutia,
R/o Rarick Busty,
P.O. Manrongong,
P.S. Phodong,
North Sikkim.
58. Mrs. Achen Wongmu Lepcha,
Aged about 54 years,
W/o Shri Tenzing Bhutia,
R/o Rarick Busty,
P.O. Manrongong,
P.S. Phodong,
North Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

59. Mr. Sahadeo Rai,
Aged about 48 years,
S/o Late Man Bahadur Rai,
R/o Zero Point, Ranka Dhazey,
P.O. Ranka,
P.S. Ranipool,
East Sikkim.
60. Mr. Bhanu Bhakta Pradhan,
Aged about 49 years,
S/o Shri D. P. Pradhan,
R/o West Pandam,
P.O. Pandam,
P.S. Singtam,
East Sikkim.
61. Mr. Kharga Bahadur Chettri,
Aged about 51 years,
S/o Late Ran Bahadur Chettri,
R/o Upper Sukrabarey,
P.O. Sadam,
P.S. Namchi,
South Sikkim.
62. Mrs. Deep Mala Tamang,
Aged about 47 years,
W/o Shri Prem Kumar Tamang,
R/o Soreng Bazar,
P.O & P.S. Soreng,
West Sikkim.
63. Mrs. Kaushalya Gurung,
Aged about 45 years,
W/o Shri Lazong Bhutia,
R/o Sichey Bye Pass Road,
P.O. & P.S. Gangtok,
East Sikkim.
64. Mr. Kedar Nath Sharma,
Aged about 53 years,
S/o Late Devi Charan Sharma,
R/o Pakyong,
P.O. Pakyong,
P.S. Pakyong,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

65. Mrs. Sabitri Chettri,
Aged about 51 years,
W/o Shri Manorath Sharma,
R/o Lunchok Busty,
P.O. Sombaria,
P.S. Sombaria,
West Sikkim.
66. Mr. Manorath Sharma,
Aged about 49 years,
S/o Late Hari Lall Sharma,
R/o Lunchok Busty,
P.O. & P.S. Sombaria,
West Sikkim.
67. Mr. Hari Prasad Sharma,
Aged about 45 years,
S/o Mr. P. P. Sharma,
R/o Mazitar,
P.O. Rangpo,
P.S. Rangpo,
East Sikkim.
68. Mr. Tara Nath Sharma,
Aged about 49 years,
S/o Shri Devi Lall Sharma,
R/o Lower Tarku,
P.O. Tarku,
P.S. Temi,
South Sikkim.
69. Ms. Santa Rai,
Aged about 46 years,
D/o Late Karna Bahadur Rai,
R/o Pabyuik Naitam,
P.O. Pabyuik,
East Sikkim.
70. Mrs. Lachi Maya Tamang,
Aged about 45 years,
W/o Shri Mohan Raj Subba,
R/o Soreng Bazar,
P.O. Soreng,
P.S. Soreng,
West Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

71. Mr. Yadav Prasad Adhikari,
Aged about 40 years,
S/o Late Bala Bhadra Adhikari,
R.O. Tareythang,
P.O. Bering,
P.S. Pakyong,
East Sikkim.
72. Mr. Kailash Pradhan,
Aged about 41 years,
S/o Buddhiman Pradhan,
R/o Soreng Bazar,
P.O. & P.S. Soreng,
West Sikkim.
73. Mrs. Sunita Gautam,
Aged about 45 years,
W/o Shri Bhanu Bhakta Pradhan,
R/o 6th Mile, Tadong,
P.O. Samdur,
P.S. Ranipool,
East Sikkim.
74. Mr. Paras Mani Dahal,
Aged about 55 years,
S/o Late Narad Mani Dahal,
R/o West Pandam, Mamjey,
P.O. Ralong,
P.S. Singtam,
East Sikkim.
75. Mr. Jiwan Kumar Chettri,
Aged about 48 years,
S/o Late Pukman Chettri,
R/o Martam Busty,
P.O. Bermiok Bazar,
P.S. Kaluk,
West Sikkim.
76. Mr. Tika Ram Bista,
Aged about 40 years,
S/o Parsuram Bista,
R/o Hee Yangthang Busty,
P.O. Hee Bazar, P.S. Kaluk,
West Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

77. Mr. Gyal Tshen Lepcha,
Aged about 53 years,
S/o Late D. Namchyu Lepcha,
R/o Turuk Busty,
P.O. Turuk,
P.S. Melli,
South Sikkim.
78. Mr. Mitra Lall Khatiwara,
Aged about 49 years,
S/o Bal Krishna Khatiwara,
R/o RDD Complex, Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.
79. Mrs. Rukmani Sharma,
Aged about 49 years,
W/o Shri Yadu Krishna Dhakal,
R/o Assam Lingzey,
P.O. Assam Lingzey,
P.S. Ranipool,
East Sikkim.
80. Mrs. Doma Bhutia,
Aged about 37 years,
W/o Shri Ugen Lepcha,
R/o Paney Phensong,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
81. Ms. Hari Maya Chettri,
Aged about 56 years,
D/o Late Atal Bahadur Chettri,
R/o Sadam Busty,
P.O. Sadam,
P.S. Melli,
South Sikkim.
82. Mr. Chung Chung Bhutia,
Aged about 52 years,
S/o Late T. Bhutia,
R/o Yangang Busty,
P.O. & P.S. Yangang,
South Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

83. Mr. Sherab Wangchuk Bhutia,
Aged about 48 years,
S/o Late Tenzing Gyatso Bhutia,
R/o Tathangchen,
P.O. Raj Bhawan,
P.S. Gangtok,
East Sikkim.
84. Mr. Nanda Lal Pandey,
Aged about 50 years,
S/o Late Prem Lall Pandey,
R/o Upper Namcheybong,
P.O. & P.S. Pakyong,
East Sikkim.
85. Mrs. Prisca Phurmit Lepcha,
Aged about 44 years,
W/o Mr. Nanda Lal Pandey,
R/o Upper Namcheybong,
P.O. & P.S. Pakyong,
East Sikkim.
86. Mrs. Rudra Kumari Chettri,
Aged about 50 years,
W/o Mr. D. P. Tiwari,
R/o Middle Tarku,
P.O. Tarku,
P.S. Temi,
South Sikkim.
87. Mr. Amrit Man Basnet,
Aged about 50 years,
S/o Late Jeet Bahadur Basnet,
R/o Upper Tarku,
P.O. Tarku,
P.S. Temi,
South Sikkim.
88. Mr. Kuber Prasad Sharma,
Aged about 49 years,
S/o Late Rabi Lall Sharma,
R/o Gaucharan,
P.O. Assam Lingzey,
P.S. Ranipool,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

89. Mr. Dorjee Singh Tamang,
Aged about 55 years,
S/o Late Kharka Singh Tamang,
R/o Chalamthang Busty,
P.O. & P.S. Pakyong,
East Sikkim.
90. Mr. Nandalal Sharma,
Aged about 51 years,
S/o Late Chandra Lall Sharma,
R/o Dugalakha Busty,
P.O. & P.S. Pakyong,
East Sikkim.
91. Mrs. Aki Lepcha,
Aged about 48 years,
W/o Shri Chewang Norbu Lepcha,
R/o Phensong Busty,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
92. Mr. Lakchung Lepcha,
Aged about 57 years,
S/o Samdenpa Lepcha,
R/o Lavi Busty,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
93. Mrs. Sion Namchyo Lepcha,
Aged about 34 years,
W/o Mr. Jigdal Gyatso Kazi,
R/o Kartok Busty,
P.O. Kartok,
P.S. Pakyong,
East Sikkim.
94. Mr. Augustin Lepcha,
Aged about 39 years,
S/o Late S.K. Lepcha,
R/o Pakyong,
P.O. Pakyong,
P.S. Pakyong,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

95. Mr. Norden Lepcha,
Aged about 55 years,
S/o Thuluk Lepcha,
R/o Namcheybong Busty,
P.O. & P.S. Pakyong,
East Sikkim.
96. Mr. Goray Raj Subba,
Aged about 56 years,
S/o Late Ita Raj Subba,
R/o Basilakha,
P.O. & P.S. Pakyong,
East Sikkim.
97. Mr. Shiva Shankar Adhikari,
Aged about 48 years,
S/o Late Ganga Ram Adhikari,
R/o Lower Gelling
P.O. Pipaley,
P.S. Naya Bazar,
West Sikkim.
98. Mr. Bhim Bahadur Poudyal,
Aged about 42 years,
S/o Late K. B. Poudyal,
R/o Middle Tarku,
P.O. Tarku,
P.S. Temi,
South Sikkim.
99. Mrs. Sangay Doma Bhutia,
Aged about 38 years,
W/o Shri Iswar Chettri,
R/o 7th Mile, Samdur,
P.O. Ranipool,
P.S. Ranipool,
East Sikkim.
100. Mrs. Lucky Lepcha,
Aged about 50 years,
W/o Mr. Lha Tshering Bhutia,
R/o Makha Busty,
P.O. Makha,
P.S. Singtam,
East Sikkim.

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101. Mrs. Bhim Kumari Chhetri,
Aged about 47 years,
W/o Mr. Bala Ram Chhetri,
R/o Tashiding,
P.O. Sinek, P.S. Geyzing,
West Sikkim.
102. Mr. Krishna Bahadur Chettri,
Aged about 55 years,
S/o Shri Lall Bahadur Chettri,
R/o Tashiding,
P.O. Sinek, P.S. Gyalshing,
West Sikkim.
103. Mr. Chet Nath Katel,
Aged about 48 years,
S/o Late Padam Prasad Sharma,
R/o Kaputhang Busty,
P.O. Bering,
P.S. Pakyong,
East Sikkim.
104. Mr. Kul Prasad Chhetri,
Aged 52 years,
S/o Late Kharga Singh Chhetri,
R/o Tashiding,
P.O. Sinek,
P.S. Gyalshing,
West Sikkim.
105. Mr. Kirta Bahadur Chhetri,
Aged about 48 years,
S/o Late Kharga Singh Chhetri,
R/o Tashiding,
P.O. Sinek,
P.S. Gyalshing,
West Sikkim.
106. Mr. Ratna Bahadur Chhetri,
Aged about 48 years,
S/o Shri P.B. Chhetri,
R/o Bojoghari,
P.O. Bojoghari,
P.S. Gangtok,
East Sikkim.

Mr. Lazong Bhutia and Others vs. State of Sikkim and Others

107. Mr. Man Singh Tamang,
Aged about 45 years,
S/o Late Prem Bahadur Tamang,
R/o Noab Gaon Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.
108. Mr. Nima Tshering Bhutia,
Aged about 40 years,
S/o Golay Bhutia,
R/o Lower Marchak,
P.O. & P.S. Ranipool,
East Sikkim.
109. Mr. Erastus Lepcha,
Aged about 40 years,
S/o P. T. Lepcha,
R/o Chakung Busty,
P.O.Chakung,
P.S. Soreng,
West Sikkim.
110. Ms. Phurmit Lepcha,
Aged about 29 years,
D/o Late Passang Lepcha,
R/o Upper Barfok,
P.O. Sankalang,
P.S. Mangan,
North Sikkim.
111. Mr. Goray Lepcha,
Aged about 45 years,
S/o Late Nimching Lepcha,
R/o Tanek Busty,
P.O. Ramthang,
P.S. Phodong
North Sikkim.
112. Ms. Denka Lepcha,
Aged about 48 years,
D/o Late Chungbu Lepcha,
R/o Tanek Busty,
P.O. Ramthang
P.S. Phodong,
North Sikkim.

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113. Mr. Nirmal Thapa,
Aged about 45 years,
S/o Mr. Ram Singh Thapa,
R/o Middle Syari,
P.O. Tadong
P.S. Gangtok,
East Sikkim.
114. Mr. Tempa Lepcha,
Aged about 50 years,
S/o Late Anguk Lepcha,
R/o Hee-Gyathang,
P.O. Hee-Gyathang,
P.S. Mangan,
North Sikkim.
115. Ms. Poonam Tewari,
Aged about 43 years,
D/o Shri G. P. Tiwari,
R/o Pakyong,
P.O. & P.S. Pakyong,
East Sikkim.
116. Mr. Tek Nath Sharma,
Aged about 46 years,
S/o Late Kashi Nath Sharma,
R/o Sangkhu Dentam,
P.O. Dentam,
P.S. Dentam,
West Sikkim.
117. Mr. Dil Bir Subba,
Aged about 53 years,
S/o Shri Dhan Bahadur Subba,
R/o Soreng Busty,
P.O. & P.S. Soreng,
West Sikkim.
118. Mr. Mil Man Subba,
Aged about 51 years,
S/o Shri Pemba Singh Subba
R/o Soreng,
P.O. Soreng,
P.S. Soreng,
West Sikkim.

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119. Mrs. Jyoti Sigdel,
Aged about 46 years,
W/o Late K. B. Chettri,
R/o Namcheybong,
P.O. & P.S. Pakyong,
East Sikkim.
120. Mr. Narayan Prasad Sharma,
Aged about 53 years,
S/o Late Brihespati Sharma,
R/o Aho Busty,
P.O. Aho Andhery,
P.S. Pakyong,
East Sikkim.
121. Mr. Purna Bahadur Subba,
Aged about 50 years,
S/o Nar Bahadur Subba,
R/o Tharpu Busty,
P.O. Tharpu,
P.S. Soreng,
West Sikkim.
122. Mrs. Roshna Bomjan,
Aged about 51 years,
W/o Mr. K. B. Chettri,
R/o Ranipool,
P.O. & P.S. Ranipool,
East Sikkim.
123. Mr. Sangay Bhutia,
Aged about 47 years,
S/o Late Wangay Bhutia,
R/o Dikling,
P.O. Pakyong,
P.S. Pakyong,
East Sikkim.
124. Mr. Ashis Thapa,
Aged about 33 years,
S/o Shri K. B. Thapa,
R/o Ranipool,
P.O. Ranipool,
P.S. Ranipool,
East Sikkim.

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125. Mr. Purna Bahadur Subba,
Aged about 40 years,
S/o Ranjit Limboo,
R/o Neh Broom,
P.O. Neh Broom,
P.S. Yangang,
South Sikkim.
126. Mr. Chitra Lall Chettri,
Aged about 47 years,
S/o Dilli Ram Chettri,
R/o Kewzing Dalep,
P.O. Kewzing,
P.S. Ravangla,
South Sikkim.
127. Mrs. Sangeeta Tamang,
Aged about 35 years,
W/o Dr. Subash Tamang,
R/o Namchi,
P.O. & P.S. Namchi,
South Sikkim.
128. Mr. Mohan Kumar Rai,
Aged about 57 years,
S/o Late Jagat Bahadur Rai,
R/o Zoom,
P.O. Zoom,
P.S. Naya Bazar,
West Sikkim.
129. Mr. Santosh Kharel,
Aged about 30 years,
S/o Nanda Lal Kharel,
R/o Namthang Lower Nagi,
P.O. & P.S. Nathang,
South Sikkim.
130. Ms. Till Kumari Sharma,
Aged about 45 years,
D/o Late Kharga Prasad Sharma,
R/o Middle Tarku,
P.O. Tarku,
P.S. Temi,
South Sikkim.

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131. Mrs. Januka Devi Sharma,
Aged about 50 years,
W/o Padamlal Sharma,
R/o Soreng Kharga Bazar,
P.O. & P.S. Soreng,
West Sikkim.
132. Mr. Bishwanath Sharma,
Aged about 53 years,
S/o Hari Prasad Sharma,
R/o Pachey Samsing,
P.O. Pachey,
P.S. Pakyong,
East Sikkim.
133. Mr. Lall Das Koirala,
Aged about 47 years,
S/o Late Bishnu Das Koirala,
R/o Khesey Busty,
P.O. Samdong,
P.S. Makha,
East Sikkim.
134. Mr. Bansi Gurung,
Aged about 55 years,
S/o Late Tikaram Gurung,
R/o Sukrabarey Busty,
P.O. Sadam,
P.S. Melli,
South Sikkim.
135. Mr. Indra Kumar Karki,
Aged about 55 years,
S/o Late Chandra Bahadur Karki,
R/o Sukrabarey Busty,
P.O. Sadam,
P.S. Melli,
South Sikkim.
136. Mr. Sonam Bhutia,
Aged about 40 years,
S/o Mr. Pem Suna Bhutia,
R/o Dikling Busty,
P.O. & P.S. Pakyong,
East Sikkim.

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137. Mr. Kassang Lepcha,
Aged about 42 years,
S/o Late Leda Tshering Lepcha,
R/o Paney Phensong Busty,
P.O. Phensong,
P.S. Phodong,
North Sikkim.
138. Mr. Chandra Bahadur Tamang,
Aged about 45 years,
S/o Late Ratna Dorjee Tamang,
R/o Majuwa Busty,
P.O. Arubotey,
P.S. Soreng,
West Sikkim.
139. Mr. Karma Tenzing Bhutia,
Aged about 37 years,
S/o Mingma Bhutia,
R/o Noab Gaon,
P.O. & P.S. Pakyong,
East Sikkim.
140. Mrs. Lahangma Subba,
Aged about 34 years,
W/o Mr. Lall Bahadur Chettri,
R/o Daramdin Busty,
P.O. Daramdin,
P.S. Sombaria,
West Sikkim.
141. Mr. Krishna Kumar Khati,
Aged about 55 years,
S/o Late Gauri Shankar Khati,
R/o Rhenock Bazar Camping Ground,
P.O. & P.S. Rhenock,
East Sikkim.
142. Mrs. Pema Choden Bhutia,
Aged about 53 years,
W/o Shri Thendup Dorjee Bhutia,
R/o Penlong Bazar,
P/O Penlong,
P.S. Gangtok,
East Sikkim.

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143. Mr. Passang Sherpa,
Aged about 40 years,
S/o Shri Nima Sherpa,
R/o Phadamchen,
P/O Phadamchen,
P.S. Rongli,
East Sikkim.
144. Mr. Buddha Raj Subba,
Aged about 49 years,
S/o Late Purna Bahadur Subba,
R/o Sawney Busty,
P.O. Singtam,
P.S. Singtam,
East Sikkim.

versus

- Respondents** : 1. The State of Sikkim
through the Chief Secretary,
Government of Sikkim,
Secretariat,
East Sikkim.
Gangtok,
2. The Principal Secretary,
Human Resources Development Department,
Government of Sikkim,
Gangtok,
East Sikkim.
3. The Deputy Secretary,
Human Resources Development Department,
Government of Sikkim,
Gangtok,
East Sikkim.

Petition under Article 226 of
the Constitution of India

Appearance

Mr. Arohi Bhalla, Advocate with Ms. Rachhitta Rai, Advocate for the Petitioners.

Mr. J. B. Pradhan, Additional Advocate General with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for the State-Respondents No.1 to 3.

Mr. Bhusan Nepal, Legal Retainer for Human Resource Development Department, Government of Sikkim.

Mr. Suman Gurung, Joint Secretary for the Human Resource Development Department, Government of Sikkim, in person.

J U D G M E N T**Wangdi, J.**

1. In this Writ Petition, the Petitioners primarily seek to assail Office Orders no.1745/DIR/HRDD(SE) to 1756/DIR/HRDD(SE) dated 17-12-2014 and no.28/HRDD/W dated 18-12-2014 issued by the Respondent No.2, Annexure P1 (collectively), transferring 1063 (one thousand and sixty three) teachers and, Corrigendum dated 06-02-2015 bearing Office Order No.47/DIR/HRDD(SE) to 55/DIR/HRDD(SE), Annexure P2 (collectively). It is alleged that the impugned transfer orders were issued *mala fide* by misuse of

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official powers by the State Government in a mechanical manner without application of mind, as a punitive measure and were neither in public interest nor for administrative reasons.

2(i). It is relevant to note that during the pendency of the Writ Petition, the Petitioners sought leave of this Court to place on record certain documents which they had received from the Respondent-HRD Department in response to an application filed under the Right to Information Act, 2005.

(ii) By order of this Court dated 15-04-2015, the Petitioners were allowed to file an amended Writ Petition incorporating those documents, at the same time granting liberty to the State-Respondents also to file an affidavit on the question of maintainability of the Writ Petition as well as the other facts, if so advised, in order to enable this Court to dispose of the matter finally on the next date.

(iii) An amended Writ Petition was accordingly filed by the Petitioners which was responded to with a

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reply by the State-Respondents touching upon certain factual aspects stated in the Writ Petition while raising serious objections to its maintainability. By order dated 13-04-2014, it had been made clear to the parties that on the next date the question of maintainability of the Writ Petition shall be first taken up for consideration.

(iv) On 15-04-2015, Mr. Arohi Bhalla, Learned Counsel, appearing on behalf of the Petitioners, submitted at the bar that in view of the amendment and the documents filed with the amended Writ Petition, he will confine himself only to those in challenging the impugned transfer orders and would not press the other grounds.

3(i). Opening his arguments, Mr. Bhalla at the outset submitted that at present there are no rules or guidelines in place governing transfers and postings of teachers in the State. Office Order No.298/DIR/HRDD dated 10-07-2009 which prescribed such guidelines has since been withdrawn vide Office Order No.1337/Dir/HRDD(SE) dated 04-07-2014, Annexure P5, by the Respondent No.2 and that the purpose of this

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withdrawal, as per him, was *mala fide* considering that the Petitioners were transferred only a few months later. It was also submitted that a draft rule prepared by the Respondents earlier containing norms for making transfers are yet to be notified thereby making the teachers vulnerable to arbitrary exercise of powers by the State-Respondents in matters of transfer and posting.

(ii) The Learned Counsel pointed out that the affidavit filed on behalf of the Respondents was silent as to who had taken the decision to transfer the teachers. The irrationality and the *mala fide* intentions in the transfers are borne out by the fact that although in their reply the case of the Respondents is that one of the reasons for the transfers was shortage of teachers in the rural areas, the records, however, reveal that many of the schools situated in remote corners of the State are still running short of teachers and none were transferred there by the impugned transfer orders. Reference was made to a table in the Writ Petition containing the names of the schools and its present working strength to demonstrate the irrationality and

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mala fides on the part of the State-Respondents in issuing the transfer orders.

(iii) He would then submit that the illegality in the orders of transfer stands clearly revealed by the office notes by which the draft proposal was put up on 13-12-2014 for approval to the Minister-in-Charge of the Respondent-HRD Department who then, by his note dated 15-12-2014, directed that the proposal be put up after the list was finalised by the meeting of the Legislators on 16-12-2014 and that a corrected proposal of transfer as finalised in the meeting of the Legislators was approved by the Government on 17-12-2014.

(iv) It was asserted that the sequence of events unfolding in the office notes preceded by the curious withdrawal of the transfer policy by the Respondent No.2 and the manner in which the decision to transfer was taken smack of *mala fides*. The impugned transfer orders, as per the Learned Counsel, were also illegal as those were issued based on the decision taken by the Legislators, who had no jurisdiction or authority in such

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matters. Under such circumstances, the impugned orders of transfer are patently illegal, unauthorised and, therefore, liable to be set aside.

(v) It was strongly contended that there could be no doubt that the transfers were actuated by malice and influenced by political consideration as the decision had obviously been taken by the Legislators in their meeting instead of the Government thereby belying the plea of Respondents' administrative exigency or public interest.

(vi) Reliance on this was placed upon a decision of the Hon'ble Allahabad High Court dated 25-02-2008 in *Mohd. Zeeshan VS. State of U.P. and Others* : 2008 (4) ADJ 536, where a Single Bench of that Court relying upon *Sarvesh Kumar Awasthi VS. U.P. Jal Nigam and Others* : (2003) 11 SCC 740 and *Suresh Chandra Sharma VS. Chairman, U.P. SEB and Others* : (2005) 3 SCC 153, held as follows:-

"13. In view of the above legal position the principal that emerges is that ordinarily transfer should be made only on set norms either looking to the administrative exigency or the public interest and transfers on the request/

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complaints or dictates of MLAs and MPs would not normally stand vitiated provided they are made on the administrative grounds after verifying the substance of the complaints or public interest. In other words, transfers at the behest of politicians are permitted only to the limited extent where the authority concerned applies its mind and finds some substance in the request or complaints of the politicians of the officers/employees concerned. In nutshell, without there being anything to substantiate the complaints or to support the request the order of transfer passed merely because a politician has requested, cannot be justified. Even, in the case of Mohd. Masood Ahmad (supra) it is said that every transfer at the behest of a politicians would not stand vitiated but it all depends upon the facts and circumstances of the individual case. In the instant case the transfer has been made merely in view of the letter of the former M.P., on the allegation that he has received complaints that the petitioner is patronizing the policies of the previous Government and as such his actions are against Government in power. This complaint has not been verified and there is nothing on record to show that the Chief Secretary had found any substance in the same. The transfer in the instant case as such has not been made on any administrative exigency or in public interest. Moreover, this was not a request or complaint made by a sitting MLA or MP who may be said to be a representative of the public. It is a letter by the former MP which does not represent anybody as on date. He is nobody to inter meddle with the affairs of the department concerned on behalf of the public. In view of the aforesaid facts and circumstances the decision of the Supreme Court in the case of Mohd Masood Ahmad (supra) would not be applicable in the present case. A former M.P., on whose request the transfer is made is not a person who represents the public in general. He is only a political person and therefore his letter if being acted upon would result in giving political mileage to such a person and would not be an action in public interest or

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administrative exigency. I am therefore of the view that the power of transferring an officer cannot be wielded arbitrarily, malafidely or at the instance of politicians who no longer represent the public. If it is for the better administration that the employee concerned must have freedom from fear of being harassed by repeated transfer or transfer orders at the instance of someone who has nothing to do with the administration of the department concerned. Thus, in the above facts and circumstances the impugned order is unsustainable and suffers from total non application of mind which has been passed only to please a leader affiliated to the Ruling party. The impugned order dated 31.1.2008 (Annexure-1 to the writ petition) is therefore quashed."

(vii) Reference was also made to another decision of the Hon'ble Allahabad High Court dated 15-09-1999 in *Salek Chand vs. State of Uttar Pradesh : 1999 (4) AWC 3065*, where a similar view was taken.

4. In their reply, preliminary objections were raised by the State-Respondents on the maintainability of the Writ Petition primarily on the following grounds: -

(i) Firstly, it was stated that the scope of judicial review in matters of transfer of government employees was limited and in such matters the Courts ordinarily would not interfere. It was submitted that the transfers were necessitated due to vacancies arising in

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schools in the rural areas of the State and also in other areas due to upgradation of schools. There were also requests for transfer received from the teachers serving in those areas for long periods of time. It was thus in public interest that the action was taken and asserted that no government servant had a legal right to be posted at a particular place as transfer is not only an incident but, also a condition of their service.

(ii) The Writ Petition was also liable to be dismissed as it was preferred only by 144 (one hundred and forty four) of the 1063 (one thousand and sixty three) teachers who were transferred. Their prayers for quashing the entire orders of transfer apart from being unauthorised, would also amount to foisting a relief upon those who had not sought for it but, rather had accepted it and willingly joined their duties.

(iii) Mr. J. B. Pradhan, Learned Additional Advocate General, submitted that the transfers were neither punitive nor stigmatic but, were regular made in public interest to meet the exigencies of service. There was no *mala fide* on the part of the State-

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Respondents in taking the action. The Petitioners had failed to make out any case of *mala fides* and the allegation is bereft of any material particular to substantiate it. It was contended that it was after an in-depth consideration of the entire circumstance and the exigency of services that the Respondent-HRD Department decided to initiate such transfers which were to be given effect to during the winter vacations in order to avoid inconvenience to the teachers, students and the representative of schools.

(iv) The proposal initiated by the HRD Department and the list of teachers to be transferred prepared by it, were submitted to the Minister-in-Charge who directed that since a meeting of the Council of Ministers and Legislators was being held on 16-12-2014, the same be placed in that meeting for their information and apprise them of the decision taken by the Government. It was contended that the meeting of the Council of Ministers and the Legislators held on 16-12-2014 had not been convened to decide on the transfers but had already been scheduled earlier for other reasons. Reference of the transfer proposal in

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the meeting was thus incidental, the Department only having taken advantage of such meeting. The list finalised by the Department was thereafter approved by the Government on 17-12-2014. That the Legislators had no role in either initiating the transfers or in the preparation of the list of the teachers to be transferred but, had only been apprised of the decision of the Government.

(v) Denying all contentions to the contrary raised by the Petitioners, he would re-emphasise that the Writ Petition was not maintainable having been filed by only 144 (one hundred and forty four) of the 1063 (one thousand and sixty three) teachers who had been transferred. Rest of them having accepted the transfers and willingly joined their respective places of posting, the directions sought for in the Writ Petition would amount to foisting reliefs not sought for by them.

(vi) A catena of decisions were cited laying down limitation of the Courts in interfering in matters of transfer, some of which are:-



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- (a) *Registrar General, High Court of Judicature of Madras VS. R. Perachi and Others : (2011) 12 SCC 137;*
- (b) *N. K. Singh VS. Union of India and Others : (1994) 6 SCC 98;*
- (c) *State of Haryana and Others VS. Kashmir Singh and Another : (2010) 13 SCC 306; and*
- (d) *Mohd. Masood Ahmad VS. State of U.P. and Others : (2007) 8 SCC 150.*

(vii) Referring to *State of U.P. and Others VS. Gobardhan Lal : (2004) 11 SCC 402*, it was submitted that even where there are transgressions of administrative guidelines, Courts would not interfere with the orders of transfer as those do not confer any legally enforceable right unless vitiated by *mala fides* or is made in violation of any statutory provisions.

(viii) Relying upon *Rajendra Roy VS. Union of India and Another : (1993) 1 SCC 148*, it was submitted that in order to substantiate the case of malice or *mala fides* against the Respondents in passing the impugned orders of transfer, firm foundation was required to be laid. It was urged that reasonable inference of *mala fide* action may be possible to be drawn from the

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pleadings and antecedent facts and circumstances but, to draw such inference firm foundation of facts must be pleaded and established and not just insinuations and vague suggestions.

(ix) Several other decisions were also cited on this, some of which are:-

- (a) *Ratnagiri Gas and Power Private Limited vs. RDS Projects Limited and Others : (2013) 1 SCC 524*; and
- (b) *G. Jayalal vs. Union of India and Others : (2013) 7 SCC 150.*

(x) The Learned Additional Advocate General would further submit that office notes referred to on behalf of the Petitioners would undoubtedly show that the transfer was initiated by the Department which passed through various authorities in the hierarchy before being submitted to the Minister-in-Charge and, as per his direction, it was placed in the meeting of the Legislators that was scheduled to be held shortly thereafter, i.e., on 16-12-2014 and then was finally placed before the Government on 17-12-2014 for approval. It was asserted that *mala fide* in the

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transfers cannot be presumed only for the reason that the list was placed in the meeting of the Legislators. At best, it may give rise to suspicion but, suspicion cannot take the place of proof. In fact, as per him, the deliberations by the Legislators on the transfers added to its sanctity as they were responsible for and had serious interest in the welfare of the schools and students in their Constituencies.

(xi) Under these circumstances, as per the Learned Additional Advocate General, no interference was called for in the impugned orders of transfer and the Writ Petition was liable to be dismissed as being not maintainable.

5. Confining to the limits set out by Mr. Bhalla, I have considered the pleadings contained in the Writ Petition, the reply affidavit filed on behalf of the State-Respondents and the rival contentions placed by the Learned Counsel.

(i) At the outset, it is relevant to note that earlier WP(C) No.4 of 2015 was filed by 9 (nine) Petitioners representing large number of others

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challenging the very transfer orders being assailed in the present Writ Petition. On 10-02-2015, the Learned Counsel for the Petitioners, after arguing for some time, sought for permission to withdraw the Writ Petition with liberty to file appropriate Writ Petition(s) *"for the grievances of the petitioners against the orders of their own transfer"*. In other words, fresh Writ Petition(s) were contemplated having found the inadmissibility of pursuing with the grievances in a joint Writ Petition. The permission being granted, the Writ Petition was thus disposed of as withdrawn with liberty as prayed for.

(ii) The present Writ Petition was filed on 02-04-2015 jointly by 144 (one hundred and forty four) Petitioners once again challenging the same orders of transfer. At the time of hearing, when it was asked as to whether the Writ Petition was maintainable in the present form, it was submitted by Mr. Bhalla, Learned Counsel for the Petitioners, that legality of an order can be challenged by anyone of the persons affected thereby and would be of no consequence if the others equally affected do not choose to do so.

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(iii) I am unable to agree with this contention. This is not a representative Writ Petition for the entire lot of persons affected by the impugned orders of transfer. Out of the 1063 (one thousand and sixty three) persons said to have been affected by the impugned orders of transfer only 144 (one hundred and forty four) have chosen to approach this Court. The remaining 919 (nine hundred and nineteen) have not come forward but, rather appear to have accepted the transfers and joined their respective places of posting. The Petitioners have failed to implead them as parties to the Writ Petition thereby disabling this Court to have their views. The fact that they have chosen to stay away from these proceedings would lead to a reasonable presumption that they are not aggrieved by their transfers.

(iv) Having withdrawn the earlier Writ Petition with leave to file fresh ones against the orders of their own transfers, the Petitioners cannot be permitted to approach this Court again in the same form. Even if it is considered to be permissible for the Petitioners to approach jointly, no orders can be passed to the

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detriment of others forcing upon them a relief which they had never sought. I am, therefore, of the considered view that the Writ Petition is not maintainable on this ground alone.

6. Even on its merit, I find it difficult to be convinced that the Petitioners have been able to make out a case for interference by this Court. The parameters of the Court's power to interfere with the orders of transfer is well-settled. Although there are multitudes of decisions on this, we may usefully refer to *Gobardhan Lal* (supra), where the position of law has been re-emphasised as follows: -

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may

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afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

7. On a careful examination of the pleadings contained in the Writ Petition, I find that except for making bald allegation that the impugned orders of transfer were punitive, there are no material particulars

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set out to substantiate it. Similarly, although *mala fides* and misuse of official powers have been alleged, the pleadings are woefully bereft of material facts in support of such allegations. The only material produced by the Petitioners to indicate *mala fides* are two newspaper reports of the Minister and the Chief Minister issuing instructions to the concerned authorities to initiate appropriate disciplinary proceedings against those teachers who did not comply with the orders of transfer. It is difficult for me to be persuaded to accept that the newspaper reports would support the case of *mala fides* alleged by the Petitioners. To the contrary, assuming that the reports in the newspapers are correct, it would be in the order of administrative business for the Minister and the Chief Minister to remind the teachers of their obligations to comply with the orders of transfer as undeniably transfer is an incident of service under the service laws governing them.

8. The next material which the Petitioners heavily rely upon in support of their allegation of *mala fides* are the office notes referred to earlier and the



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transfer proposals having been discussed in the meeting of the Legislators.

(i) On a perusal of the entire notes, it transpires that after the meeting, a corrected order of transfer was placed before the Government for approval. However, there is nothing to indicate that the orders had been influenced by political considerations. Relevant and cognate to this question is that even the Petitioners are silent as to why and how their cases would and could have been influenced by political consideration. The office notes rather reveal that the proposal of the transfers was initiated by the HRD Department with the list of the persons to be transferred which was considered by the Joint Secretary and the Secretary of that Department before being placed for consideration by the Minister-in-Charge. It was only then that it was decided to place the matter in the meeting of the Legislators which appears to be quite justified having regard to the fact that the proposal was for mass transfer of teachers touching almost every part of the State. Had the proposal been mooted in the meeting of the Legislators

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and then processed, things may have acquired a different colour but, obviously that was not the case. It is thus my considered opinion that what is being made out of the office notes by the Petitioners is their perceived notion and purely conjectural.

9(i). It is a settled position of law that *mala fide* is not only to be pleaded but, is also required to be proved. In *E. P. Royappa vs. State of Tamil Nadu and Another* : (1974) 4 SCC 3, it has been held that "*the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility*" and that "*the Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party*".

(ii) Even if some suspicions do arise, it would not be sufficient for this Court to act. As held in the very case of *E. P. Royappa* (supra), "*..... circumstances do create suspicion but suspicion cannot take the place of proof*" and, the "*..... proof needed here is high degree of proof*". Therefore, on this account also, the Writ Petition would fail.

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(iii) Similar has been the view in *M. Sankaranarayanan, IAS vs. State of Karnataka and Others* : (1993) 1 SCC 54, where it has been held as under:

"12. It may not always be possible to demonstrate malice in fact with full an elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture."

10. In any case, the proposal for transfers being placed before the Legislators would not *per se* indicate any *mala fide* and that by itself would not vitiate the orders of transfer.

11. As held in *Mohd. Masood Ahmad* (supra), "*after all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstance of an individual case.*"

12. The cases of *Mohd. Zeeshan* (supra) and *Salek Chand* (supra) cited at the bar by Mr. Bhalla are clearly

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distinguishable from the facts of the present case. In those cases, the transfers of the Petitioners were indisputably as a consequence of written instructions of political leaders which is not the case here as would appear from the facts alluded to earlier.

13. Insofar as the contention of there being no rules or guidelines in place governing transfers and postings of teachers after the one in existence had been withdrawn is concerned, in my view, for that reason alone the transfer orders would not be rendered illegal, there being no infringement of statutory or constitutional rights of the Petitioners. This is, however, notwithstanding my view that such guidelines indeed ought to be in place in the interest of justice and transparency in matters of transfer but, as would be apparent from Annexure P8, the Government appears to have framed a draft rules in exercise of its powers under Article 309 of the Constitution of India which is yet to be notified. However, at this stage it is not for this Court to venture into that area as it falls in the realm of policy making, a domain which is exclusive to the Executive. It can only be hoped and expected

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that the draft rules will be given finality by the State-Respondents expeditiously in the interest of good governance and fair play.

14. For the aforesaid reasons, the Writ Petition fails.

15. Before parting, it is observed that the Respondents have unambiguously stated in their affidavit that if the Petitioners or any of them is facing hardship as a consequence of the transfer orders, they are at liberty to approach them for consideration. It has also been specifically pleaded that a Committee has been duly constituted by the Respondent No.2 for this purpose vide Office Order No.120/Dir/HRDD dated 05-03-2015.

16. It would thus appear from the above that a forum for redressal has been created by the Respondents. In view of this, it would be appropriate for the Petitioners to approach the said Committee with their grievances. If the Petitioners or any of them approaches the Committee, it shall dispassionately

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consider their representations and grant them appropriate reliefs permissible under the rules.

17. With these directions, the Writ Petition stands disposed of with no order as to costs.

Sd/-
(**S. P. Wangdi**)
Judge
14-07-2015

Approved for reporting : **Yes**

Internet : **Yes**

ds/to