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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.20875, 20894, 21429, 21775, 21788, 22020, 22526, 22584, 23131, 23220, 23265, 23838, 23840, 23988, 23992, 24003, 30666, 30965, 30968, 30980, 31067, 31139, 31556 & 32197 of 2025

In the matter of applications under Articles 226 & 227 of the Constitution of India, 1950.

Ranjan Kumar Tripathy
[In W.P.(C) No.20875 of 2025]

Fakir Mahananda
[In W.P.(C) No.20894 of 2025]

Smt. Jyotirmayee Jena
[In W.P.(C) No.21429 of 2025]

Mrs. Namita Mishra
[In W.P.(C) No.21775 of 2025]

Prabhati Naik
[In W.P.(C) No.21788 of 2025]

Jhinilata Sethi
[In W.P.(C) No.22020 of 2025]

Sarat Chandra Nayak
[In W.P.(C) No.22526 of 2025]

Ranjan Kumar Mahala
[In W.P.(C) No.22584 of 2025]

Nirakar Panda
[In W.P.(C) No.23131 of 2025]

Siva @ Siba Sankar Misra
[In W.P.(C) No.23220 of 2025]

Santosh Kumar Dakshinray
[In W.P.(C) No.23265 of 2025]

Sri Manas Kumar Giri
[In W.P.(C) No.23838 of 2025]

Manas Kumar Das
[In W.P.(C) No.23840 of 2025]

Narusu Sethy
[In W.P.(C) No.23988 of 2025]

Ranjan Kumar Sethy
[In W.P.(C) No.23992 of 2025]

Shankar Sethi
[In W.P.(C) No.24003 of 2025]

Swarnapriya Sahoo
[In W.P.(C) No.30666 of 2025]

Avimanyu Pani
[In W.P.(C) No.30965 of 2025]

Prasanna Kumar Behera
[In W.P.(C) No.30968 of 2025]

Swarnalata Behera
[In W.P.(C) No.30980 of 2025]

Sasmita Senapati
[In W.P.(C) No.31067 of 2025]

Ekadasi Behera
[In W.P.(C) No.31139 of 2025]

Manaswini Hota
[In W.P.(C) No.31556 of 2025]

Nirupama Sahoo ... ***Petitioners***
[In W.P.(C) No.32197 of 2025]

-versus-

State of Odisha & Others
[In all WPs except W.P.(C) No.32197 of 2025]

Secretary to Govt., S & ME Department & Others
[In W.P.(C) No.32197 of 2025] ... ***Opposite Parties***

Advocates Appeared in these cases

For Petitioners - M/s.Kunal Ku. Swain, K. Swain & J.R. Khuntia, Advocates in W.P.(C) Nos.23838, 23840, 30965 & 30968 of 2025.

M/s.Sukanta Ku. Dalai, P. Swain, S. Mahapatra, B. Bhuyan, J. Bhuyan & S.K. Panda, Advocates in W.P.(C) Nos.20875, 20894, 21788, 22020, 23220, 23988, 23992 & 24003 of 2025.

M/s.Durgesh Narayan Rath, A.K. Saa & S.Das, Advocates in W.P.(C) Nos.22526, 22584, 23131 & 23265 of 2025.

M/s.Ramdas Achary, S.Das, S. Srichandan & P.Agarwal, Advocates in W.P.(C) Nos.30666 & 31067 of 2025.

Mr.Biswabihari Mohanty, Advocate in W.P.(C) Nos.30980 & 31139 of 2025

M/s.Mohit Ku. Pati, M. Pati, S. Kar & S.S. Pati, Advocates in W.P.(C) No.32197 of 2025.

M/s. (Dr.) Purusottam Chuli, P.Nath & P.Punyatoya, Advocates in W.P.(C) No.21775 of 2025.

M/s.Sameer Ku. Das, P.K. Behera & N.Jena, Advocates in W.P.(C) No.21429 of 2025.

M/s.Agasti Kanungo, C. Nayak, N.K.Mishra & S. Sukla, Advocates in W.P.(C) No.31556 of 2025.

For Opp. Parties - Mr.Saroj Ku. Jee,
Addl. Govt. Advocate in all W.Ps

M/s.R.R.Ray, N.K. Sen, P.K. Samal & S.R. Mishra, Advocates for O.Ps.7 & 8 in W.P.(C) No.21429 of 2025.

M/s.K.K. Rout, S.K. Rout, S.K. Baral, P.N.Pattnaik, T.S. Swaraj, S. Sthitaprajna, S.Sahoo & S.K. Bhuyan, Advocates for O.P.4 in W.P.(C)No.22020 of 2025.

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HONOURABLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

Date of Hearing : 24.11.2025 :: Date of judgment:27.11.2025

***PER* DIXIT KRISHNA SHRIPAD, J.**

All these petitions, by a set of teachers, essentially seek to lay a challenge to the transfer orders. A few of the petitions involve the transfer orders that are put in challenge in the departmental appeals. Other few, call in question the letter no. SME-GHS-GHS-0125-2021 dated 13.05.2025, which provides for the MPs & MLAs recommending to the jurisdictional authorities the cases of transfer.

2. Learned advocates appearing for the petitioners made the following submissions in support of their cases:

(a) The impugned transfer orders are contrary to statutory Guidelines dated 14.05.2025, which regulates the transfer.

(b) The transfer Guidelines provides for decision making by the Committee on normative basis and that the transfer orders are vitiated because of political influence.

(c) The letter dated 13.05.2025, which enables the jurisdictional MPs & MLAs to recommend teachers for transfer, is without authority of law and otherwise also unsustainable.

(d) Some of the transfers have been effected purporting to be on the ground of request, when no request is made at all; adding insult to the injury, these transferees are denied transfer allowances.

In support of these submissions, the advocates relied upon certain rulings.

3. Learned Addl. Government Advocates-Mr. Jee & Lenka resisted the petitions mainly on the following grounds:

(a) All public servants, regardless of transfer guidelines, are liable to be transferred during their service on administrative grounds. All teachers, being public servants, cannot seek exemption from transfer.

(b) There is a provision for departmental appeal against the transfer orders and the same being efficacious, petitioners who have directly approached the Writ Court, should be relegated to the appellate authorities. Those who have already appealed, should have their petitions dismissed, pending adjudication of the said appeals.

(c) The transfer Guidelines are merely directory provisions and therefore, their violation *per se* would not give a choate cause of action for maintaining the Writ Petitions, especially when departmental remedy being available under the very same Guidelines.

(d) The impugned letter dated 13.05.2025 is in the nature of Executive Instructions to enable MPs & MLAs to recommend for transfer of teachers, since they know the local requirement; even otherwise, their recommendation is subject to other norms laid down in the very same letter, ultimate decision being taken by Transfer Committee.

(e) The transfers have been made essentially on the recommendation of the Transfer Committee, and that the recommendations made by MPs/MLAs are only an input, while decision making. In any event, the teachers cannot cling on to the very same schools for years and their inter-change between one school and another would serve administrative exigency.

Learned AGAs also pressed into service certain rulings in support of their stand.

4. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

4.1. The scope & nature of transfer Guidelines:

(i) There are two sets of transfer Guidelines both dated 14.05.2025 promulgated by the State Government, and that they have been published in the Gazette Notifications. There is no dispute at the Bar that these Guidelines have been promulgated *inter alia* under the provisions of Sections 19 & 25 read with the Schedule to the Right of Children to Free and Compulsory Education Act, 2009. Therefore, these Guidelines are not just Executive Instructions, but do enjoy statutory force. They prescribe the mode & modalities for transfer of teachers. *Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden* said ***Taylor v.***

Taylor[1]. Therefore, the wide proposition of learned AGAs that no civil servant is exempt from transfer, is not applicable to the case at hand, *stricto sensu*. In other words, teachers are also transferable, but only in accordance with the transfer Guidelines. Mr. Jee's reliance on ***Mrs. Shilpi Bose v. State of Bihar***[2], discussing about sweeping power of transfer, would not come to the rescue of OPs, inasmuch as the said case involved Executive Instructions, as distinguished from the statutory ones at hands.

(ii) The transfer Guidelines constitute the Transfer Committee for effecting transfers, in the light of parameters prescribed by these Guidelines. The Committee takes institutional decisions after verifying list of eligible candidates prepared through computer based programme keeping in view the grounds for transfer. The decision would be conveyed by the Director of Elementary Education by issuing orders. These transfers may be inter-district or intra-district, depending upon the parameters prescribed by the Guidelines. Once the order is issued, the Collector concerned will give place of posting. Only thereafter, the District Education Officer (DEO) shall relieve the teacher concerned, in the case of inter-district transfer. In respect of transferred Junior Teachers, it is DPC that issues relieving orders. No sooner this is done, the transferee shall submit duty report at the new place. What one has to keep in mind is that disruption of imparting lessons to the pupils will have far reaching consequences and therefore, the provision for relieving & reporting has to be scrupulously followed.

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[1] 1875 LR 1 ChD 426
[2] AIR 1991 SC 532

(iii) The transfer Guidelines specify that the transfer exercise can be undertaken during the period between 16th of April and 10th of June. This is obviously to ensure that no hardship would be occasioned to any educational institution which will be in the lull during interregnum between the final examinations and admissions, which ordinarily would be during the said period. One cannot overlook that there may be cases warranting transfer even after the said period. However, the authority for effecting the same is specified. In few of petitions, it is other than the competent authorities who have issued the impugned transfers, though they are beyond the specified period. An order without jurisdiction is a nullity and this applies to such orders, as rightly submitted by learned counsel appearing for the petitioners.

4.2. Teachers of Government School versus other civil servants:

(i) All teachers in Govt. Schools are civil servants, but all civil servants are not teachers. Broadly speaking, the nature & scope of their jobs differ. Without civil servants, arguably, governance could not run. Without teachers, new generation cannot be rightly brought up. It is the teachers who shape the civilization by inculcating values for social organization & development. To wipe out a nation from the world map, no atom bomb is necessary; if standard of teaching is diminished, that would happen before long. That is why our scriptures say 'Gurubhyonamah', literally meaning 'salutation to the teacher'. In the matter of transfer, even the Guidelines applicable to the teachers of Govt. Schools are different from those for the other civil servants. The arguable similarities in the set of these Guidelines

will not diminish the difference between these two separate classes. In the matter of transfer relating to other civil servants, true it is, the elected representatives like MLAs & MPs can have their say. This view gains support from ***Mohd. Masood Ahmad v. State of U.P.***[3]. The Division Bench decision of Karnataka High Court in ***Sri S.Venkateshappa v. State of Karnataka***[4] disposed off on 22.08.2025 proceeds on the same line of reasoning.

(ii) One has to keep in mind as to why the Transfer Committee comprising of high officials is constituted for recommending transfer of teachers. It is not without any reason. Purity in the realm of academics & the educational institutions has to be maintained. *Academic freedom as individual freedom of the teacher, is a projection of ideological and the right to freely disseminate the thoughts, ideas & options of teachers in the exercise of its function*, observed the Constitutional Court of Spain[5]. Political interference or affinity in the campus is not desirable in general and in the matters of transfer of teachers, in particular. An argument to the contrary will have pollution-potential. What is dismaying is the functional nature of impugned letter dated 13.05.2025 which precedes promulgation of transfer Guidelines. The said letter provides for MPs/MLAs recommending transfer of teachers, of course, subject to certain norms & restrictions. Nothing has been stated in the said letter as to under what authority it has been issued, to claim legal efficacy. Added, this letter

[3] (2007) 8 SCC 150
[4] W.P. No. 3612 of 2025 (S-KSAT).
[5] AUTO 42/1992, FJ 2

earlier in time is subsumed in the statutory transfer Guidelines that came a day after. Despite repeated questioning, learned AGAs, with all jugglery of words, were not in a position to point out any provision of statute under which the same has been issued. Assuming that it purports to have been issued in exercise of Executive Power of the State under Article 162 of the Constitution, it does not have any trappings of Government Order in terms of Article 166, which prescribes the format. No jurisprudential nor administrative justification is demonstrated. Added, the statutory transfer Guidelines, by virtue of their policy content, do not accommodate the content & intent of this letter. Lastly, a copy of the Executive Decision or its material particulars, on which the letter is structured, is conspicuously absent. The said letter has been issued by the Joint Secretary to Government to the Director of Secondary Education & Director of Elementary Education.

4.3. Likely consequences of impugned letter dated 13.05.2025:

(i) Section 159 of Representation of People Act, 1951 provides for taking *inter alia* teachers of Government Schools, like the petitioners herein, for election duties. The same reads as under:

> *"**159. Staff of certain authorities to be made available for election work.**—(1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.*
>
> *(2) The following shall be the authorities for the purposes of sub-section (1), namely:—*

> *(i) every local authority;*
> *(ii) every university established or incorporated by or under a Central, Provincial or State Act;*
> *(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);*
> *(iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government."*

Section 27 of 2009 Act is in the nature of addendum to the aforesaid provision of 1951 Act. The same has the following text:

> ***"27. Prohibition of deployment of teachers for non-educational purposes**.—No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be."*

(ii) It is a matter of common knowledge that in a vibrant democracy like ours, the period elections are held to the Parliament & State Legislatures, as festival of lights. For the conduct of elections and their preparatory works, services of teachers too are requisitioned. Impugned letter of the kind, which provides for MPs/MLAs recommending transfer of teachers, has the potential of creating a seamless nexus between the political parties/ candidates and the community of teachers. This would not augur well to the system. One needs no research to visualize the fruits of poisonous tree that would grow on the soil of such nexus. It is teachers, more particularly those who teach up to the level of HSC/X Standard, who mould the younger generation as citizenry in the making. As of necessity, teachers have to maintain safe distance from political parties & elected representatives. Political philosopher Hannah Arendt (1906-1975) of New

York in her essay "The Crisis in Education" (1958) said "Education can play no part in politics, because in politics we always have to deal with those who are already educated." Mr. Willard E. Givens writes "*everyone will agree that our schools can serve our society best if kept free from partisan politics. Separation of education from general municipal government is helpful in doing that. There is no other public service where partisan interference is more disastrous than in education. The actual work of the schools transcends partisan considerations. Science knows nothing of republican chemistry, democratic astronomy, or socialistic physiology. Even in the more controversial social studies, there are facts and trends, the truth of which is not subject to partisan interpretation.*"[6]

4.4. As to impugned letter dated 13.05.2025 being an extraneous consideration:

(i) As already mentioned, the letter of Joint Secretary dated 13.05.2025 being liable to be completely ignored, the Transfer Committee should have undertaken the proposals for transfer of teachers within the parameters prescribed in the statutory transfer Guidelines. However, a perusal of several impugned orders herein unmistakably demonstrate that not only the recommendation of MPs/MLAs were considered, but these Committees were unjustifiably swayed away by such recommendation. In any circumstance, this letter could not have factored in the decision making of transfers.

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[6]. Willard E. Givens (Executive Secretary, National Education Association), 'Shall School Systems Be Independent of Other Government Agencies?. Available at: School Life, Official Journal of the U.S Office of Education, Vol. XXV.

(ii) The vehement contention of learned AGAs that the impugned letter in question is only recommendatory and that it does not bind the Transfer Committee while making decisions, appears attractive at the first blush. However, its worth is robbed off on deeper examination. In several impugned orders, the decision is stated to have been taken by the Committee only on the recommendation of MPs/MLAs. These decisions do not mention about the parameters discernable from the transfer Guidelines. It hardly needs to be stated about the enormity of influence such recommendations of MPs/MLAs would cast on the officials, who happen to be the members of Transfer Committee. Cases are replete wherein recommendations of the kind are virtually treated as commands. Therefore, the transfer orders which are structured *inter alia* on such recommendations, are to be treated as having been made on extraneous considerations and consequently are liable to be invalidated.

4.5. As to availability of remedy of departmental appeals:

(i) In most of these petitions, appeal could have been filed before the competent authorities and therefore, petitioners should be relegated to the said remedy, was the contention of learned AGAs. This is bit difficult to countenance, inasmuch as an order without jurisdiction can be examined by the Writ Court even when alternate remedy is available. After all, the doctrine of alternate remedy cannot be treated as Great Wall of China that would prevent entry of worthy litigants to the portals of Writ Court. This apart, judicial opinions galore on the proposition that certiorari proceedings are an exception to the said doctrine. It is also told at the Bar that in four of

the cases, namely, WP(C) Nos. 20875, 22584, 23131 & 23265 of 2025 statutory appeals are pending. Suffice it to say that such appeals should be disposed off forthwith in the light of this judgment.

(ii) Added to the above, the contended alternate remedy cannot be said to be efficacious in the light of recommendations made by MPs/MLAs. Not even one sample case is cited before the Court wherein despite such recommendation either the Transfer Committee has taken a different view or the appellate authority has dared to do it. Constitutional courts cannot send back a worthy cause, which can be otherwise treated on merits on the material available on record. The impugned orders do not indicate the availability of appeal remedy, so that the poor teachers could have availed, even otherwise. The evolving norms of administrative law require the statutory authorities to indicate in their decisions as to the appealability, appellate authority & the limitation period for appeal. After all, a plea of alternate remedy cannot be mindlessly chanted like mantra to deny justice to the worthy litigant.

4.6. The last submission of learned advocates appearing for the petitioners that some of the transfer orders have been made by the Committee on the ground of mutuality, when no request was made, is also substantiated by the material on record. No counter has been filed by the State. Even otherwise, no file is produced to show that any request was made for mutual transfers. There is something like adding insult to the

injury: The transfer allowance is denied on the ground that it was made on mutual request, even when there was no such request at all. Conversely, even when mutual requests are made, the same have not been favoured. No reasons are assigned for such mindless denial of mutual transfer.

4.7. All the above being said, there is force in the submission of learned AGAs Mr. Jee & Lenka that even if the transfer orders are set aside, those teachers who have reported for duty at the transferred places, should continue till after the expiry of academic year, so that the community of students is not put to prejudice. The Court has to keep in view the interest of the pupils above that of the teachers. No prejudice would be caused to anyone, if the course suggested by the learned AGAs is accepted. However, such of the petitioners should be restored to their original places wherein they were working before the issuance of impugned orders, within one week following the expiry of academic year 2025-26. Any delay in this regard would be viewed very seriously in the next level of the legal battle.

In the above circumstances, all these petitions are allowed with the following directions:

(i) A Writ of Certiorari issues quashing the impugned letter no. SME-GHS-GHS-0125-2021 dated 13.05.2025 and the impugned transfer orders, as well.

(ii) A Writ of Mandamus issues to continue the petitioners in the same places in which they were respectively working before the issuance of impugned transfer orders, subject to what has been stated in paragraph 4.7 above.

(iii) A Writ of Mandamus also issues to dispose off all departmental appeals in the light of this judgment within an outer limit of four weeks. Delay shall be viewed very seriously.

This judgment shall not come in the way of fresh transfer process being undertaken in terms of extant transfer Guidelines, keeping in view the observations made therein and in that connection contentions are kept open.

No costs.

Web copy of the judgment to be acted upon by all concerned.

Dixit Krishna Shripad,
Judge

Orissa High Court, Cuttack
The 27th day of November, 2025/GDS