



# COURT NEWSLETTER

## HIGH COURT OF SIKKIM

Vol.5 Issue No. 3

July to September, 2013



*Hon'ble Mr. Justice Narendra Kumar Jain being sworn in as  
the Judge of High Court of Sikkim  
by the  
Hon'ble Governor of Sikkim Shri Shrinivas Patil at Ashirwad Hall, Raj Bhavan*

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Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim

### **COMPILED BY**

Mrs. K.C. Barphungpa, Registrar General, High Court of Sikkim

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**VACANCIES IN COURTS****(i) Vacancies in the High Court of Sikkim as on 30.09.2013**

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	03	0

**(ii) Vacancies in the District & Subordinate Courts as on 30.09.2013**

Sl. No.	Name of the State	Sanctioned Strength	Working Strength	Vacancies
1.	SIKKIM	17	12	05

**INSTITUTION, DISPOSAL AND PENDENCY OF CASES****(1) High Court of Sikkim from 1.07.2013 to 30.09.2013**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1	69	30	30	69	15	26	22	19	88

**(2) District & Subordinate Courts from 1.07.13 to 30.09.13  
(East & North) & (South & West)**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	267	59	76	250	646	300	361	585	835

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.09.13
	Opening Balance as on 1.04.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	181	94	133	142	18	566	526	58	200

**(3) Family Court (East & North) at Gangtok from 1.07.13 to 30.09.13**

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	44	48	60	32	16	13	24	05	37

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	1	1	0	2	3	6	4	5	7

(4) Family Court (South & West) at Namchi from 1.07.13 to 30.09.13

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.12	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	16	20	18	18	4	4	4	4	22

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.09.13
	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 1.07.13	Institution from 1.04.13 to 30.09.13	Disposal from 1.04.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	0	0	0	0	4	3	3	4	4

(5) Lok Adalat Cases from 1.07.13 to 30.09.13

Sl. No.	Name of Lok Adalat	Opening Balance as on 1.07.13	Institution from 1.07.13 to 30.09.13	Disposal from 1.07.13 to 30.09.13	Pendency at the end of 30.09.13	Cases returned
1.	High Court Lok Adalat	5	9	5	9	0
2.	District Lok Adalat at Gangtok	200	201	218	141	42
3.	District Lok Adalat at Namchi	7	8	8	3	4
4.	Taluk Lok Adalats at Gyalshing	1	28	29	0	0
5.	Taluk Lok Adalats at Ravangla	0	16	16	0	0
6.	Taluk Lok Adalats at Mangan	0	5	3	1	1
	Total	213	267	279	154	47

**SOME RECENT HIGH COURT JUDGMENTS OF PUBLIC IMPORTANCE**

- (1) **Order of discharge passed in a complaint case in the absence of joint application for withdrawal is irregular:** On 26.07.2013, a Single Bench of the Court in WP (Crl.) No. 01 of 2011 (Radhey Shyam Swami Vs. Amrit Singhi & Anr.) has held that the cases of offences under the Negotiable Instruments Act, 1881 are triable by summons procedure, which is governed by Chapter XX of the Code of Criminal Procedure. Section 258 of the Code alone entitles the Magistrate to stop the proceedings midway and to discharge the accused but Section 258 applies only in cases instituted on the basis of a police report. In the case under Section 138 of the Negotiable Instruments Act, 1881, the Ld. Judicial Magistrate stopped the proceedings midway and set the petitioner/accused at large by passing an order of discharge on the basis of the agreement of compromise which could not have been passed as the case was one passed on private complaints, in the absence of a bilateral application signed by both the parties. The action of the Ld. Magistrate in taking up the matter and disposing of the whole case fully and finally on the basis of agreement of compromise was highly irregular and was liable to be corrected in revisional jurisdiction by the Ld. Sessions Court. The Court confirmed the order of the Ld. Sessions Judge setting aside the order of discharge passed by the Ld. Magistrate after disposing of all the private complaints as compromised.
  
- (2) **Bona fide requirement of landlord for eviction of tenant need not mean absolute pressing necessity, but should mean reasonable need:** On 26.07.2013, a Single Bench of the court in RFA No. 03 of 2013 (Dr. Sakuntala Sharma Vs. Mohan Kumar Agarwal along with 4 other common matters, has held that in a case for eviction of tenant on ground of bona fide requirement of the landlord, it is well settled that bona fide need does not mean an absolute pressing necessity, but means a reasonable need or requirement involving an element of necessity. Thus, in a case for eviction on ground of bona fide need, the cardinal issue which has to be considered by the court is whether the need projected is a genuine and reasonable or whether the need has been projected merely as a ruse for evicting the tenants.
  
- (3) **An employee can challenge the order of transfer or transfer-cum-deputation if it is tainted with mala fide:-** On 29.07.2013, the Division Bench of the Court in WP(C) No. 03 of 2012 (H.B. Rai Vs. State of Sikkim & Ors.) has held that the concept of deputation contemplates a borrowing agency and a lending agency and the request from the borrowing agency to the lending agency for sending an employee of the lending agency on deputation to the borrowing agency, and the willingness of the lending agency to send him. The only ground which may be available to challenge an order of transfer or an order of transfer-cum-deputation is the ground of mala fides or colourable exercise of power. This, the order of transfer-cum-deputation passed against the petitioner even in the absence of any request from the part of the borrowing agency, the Sikkim Manipal University by the state government, the lending agency, and without being informed of any willingness on the part of the borrowing agency to

4. **Courts should not decide the suit finally invoking the provisions of Order XII Rule 6 of the CPC on the basis of evidentiary admission:** On 06/08/2013, a Single Bench of the Court in RSA No. 01 of 2012 (Umesh Agarwal & Ors. Vs. Mahesh Agarwal & Ors.) has held that Order XII Rule 6 of the CPC empowers the Court to act on admission of fact either in the pleadings or otherwise to make such orders or judgment in the suit as it thinks fit. The law contemplates two kinds of admissions – judicial admissions and evidentiary admissions. Judicial Admissions stand on higher pedestal than evidentiary admissions. Evidentiary admissions will have to be proved against the makers like any other relevant fact. It was on the basis of the admission made by the plaintiffs in a previous suit that the first defendant in the trial court filed the application under Order XII Rule 6, based upon which the trial court dismissed the suit straightway and the lower appellate court also virtually endorsed the view of the reasoning of the trial judge. The said admission relied on by the defendant were not judicial admissions and they were at best evidentiary admissions. The courts below should be more cautious and should not be unmindful of the scope of acting on evidentiary admissions while deciding a highly contentious issue even without trial. The Court set aside the impugned judgments on the application under Order XII Rule 6 of the CPC remitted the suit to the trial court.
  
5. **Where there is no statutory provision charging service tax on sale of lottery tickets, the same cannot be levied under the subordinate legislation:** On 24.09.2013, the Division Bench of the Court in WP (C) No. 32 of 2012 (M/s Future Gaming Solutions India Pvt. Ltd. Vs. Union of India & Ors.), while striking down Rule 6(7C) of the Service Tax Rules, 1994 (as amended) which imposed service tax on the sale of Lottery tickets, has held that when there is no liability to pay tax under the statutory provision, i.e., under the Finance Act, 1994, as amended by the Finance Act, 2012, it is not open to the respondents to demand such tax under an optional scheme of payment of service tax notified under the subordinate legislation, i.e., Rule 6 (7C) of the Service Tax Rules, 1994. Demand of such tax is *ultra vires* the very provisions of the Finance Act being in excess of the powers vested therein. Charging provision is an essential and indispensable ingredient of taxation and in the absence of a charging provision no tax can be collected solely on the basis of machinery for collection of tax. It was further held that lottery is not a 'service' being an activity falling within the meaning of 'actionable claim' and, therefore, stands excluded from the taxable service under the service tax laws introduced under the Finance Act, 2012.

## *Glimpses of the Swearing-In Ceremony*



## MAJOR DEVELOPMENTS AND EVENTS

### (1) INDEPENDENCE DAY

The High Court of Sikkim celebrated the 67<sup>th</sup> Independence Day in its premises on 15<sup>th</sup> August, 2013. The National Flag was unfurled by Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, High Court of Sikkim. Thereafter Guard of Honour was presented to His Lordship by the Guards attached to the High Court, followed by the National Anthem. The Celebration concluded with a colourful Cultural Programme.

Also present on the occasion were Hon'ble Mr. Justice S.P. Wangdi, Judge High Court of Sikkim, Judicial Officers, Senior Advocates, Members of the Bar, Officers and staff of the Registry and Persons from the Electronic and Print Media.

### (2) SWEARING IN CEREMONY OF HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN AS JUDGE OF HIGH COURT OF SIKKIM

On 30<sup>th</sup> September, 2013 Hon'ble Mr. Justice Narendra Kumar Jain, Judge of Rajasthan High Court was sworn in as the Judge of High Court of Sikkim. The Oath of Office was administered by the Hon'ble Governor of Sikkim, Shri Shrinivas Patil at Ashirwad Hall, Raj Bhavan in the presence of Hon'ble the Chief Minister of Sikkim, Hon'ble the Chief Justice, Hon'ble Speaker, Hon'ble Judge, Cabinet Ministers, Chief Secretary, Dignitaries of the State Government, Advocate General, Additional Advocate General, Judicial Officers, Senior Advocates, Members of the Bar and local gentry.



Hon'ble Justice Jain was born on 8<sup>th</sup> October 1952 at Newai, District Tonk, Rajasthan. He completed his Secondary School from Newai in the year 1969 and then higher secondary and Bachelors of Commerce (B.Com) in the years 1970 and 1973 respectively from Tonk, Rajasthan. Thereafter, Justice Jain shifted to Delhi in the year 1973 and took admission in the University of Delhi in 1974 and completed his Bachelors of Law (LL.B) in the year 1977. Justice Jain then shifted to Jaipur and got himself enrolled with the Bar Council of Rajasthan on 28<sup>th</sup> May, 1978 and started his legal practice in the Rajasthan High Court Bench at Jaipur.

His Lordship practiced civil, criminal, taxation, labour, company, service and revenue matters. In the High Court, he was the Standing Counsel/Panel Lawyer for Regional Provident Fund Commissioner, Income

Tax Department (also in the CAT), National Insurance Company, Jai Narayan Vyas University, Jodhpur and Medical and Health Department, Government of Rajasthan. His Lordship was also the Deputy Government Advocate of Commercial Taxes Department, Government of Rajasthan in Sales Tax Tribunal at Jaipur.

Hon'ble Mr. Justice Jain was elevated as a permanent Judge of the High Court of Rajasthan on 2<sup>nd</sup> September, 2004 and was nominated as the Administrative Judge on 21<sup>st</sup> November, 2012. His Lordship was the Acting Chief Justice of the High Court of Rajasthan from 14<sup>th</sup> December, 2012 to 2<sup>nd</sup> January, 2013. His Lordship was appointed as the Executive Chairman of the Rajasthan State Legal Services Authority on 17<sup>th</sup> January, 2013. His Lordship disposed off approximately 43,150 cases as Judge, Rajasthan High Court.

### **(3) Training on National Core Version Case Information System.**

As per the directions of the e-Committee, Supreme Court of India two System Administrators namely Mr. Yoland Christopher of the District & Sessions Courts (East & North) at Gangtok and Mr. Deependra Dixit of District & Sessions Courts (South and West) at Namchi underwent training on National Core Version (CIS) at Chandigarh Judicial Academy (Chandigarh) for five days w.e.f. 29<sup>th</sup> July, 2013 to 2<sup>nd</sup> August, 2013.

Thereafter, they imparted training on National Core Version CIS to twenty (20) staff members of Subordinate Courts, District Jails (Rongyek and Namchi) and Sikkim State Legal Services Authority for three days w.e.f. 29<sup>th</sup> August, 2013 to 31<sup>st</sup> August, 2013 in the court complexes of District & Sessions Court (East) and District & Sessions Court (South) at Namchi respectively.

**IMPORTANT VISITS & CONFERENCES**

1. Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, High Court of Sikkim attended the First Regional Judicial Conference on “Role of Courts in upholding Rule of Law” (East Zone) w.e.f. August 30, 2013 to September 1, 2013 at Gauhati organized by the National Judicial Academy under the auspices of Hon'ble Gauhati High Court.

Hon'ble Mr. Justice K.S. Radhakrishanan, Judge, Supreme Court of India visited Sikkim on September 13, 2013. His Lordship, Hon'ble Mr. Justice Pius C. Kuriakose, Chief Justice, High Court of Sikkim and Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim attended a programme “*Interface with Judicial Officers of the South and West District, Members of the DLSA/TLSC and Members of the Bar*” at Namchi, South Sikkim on September 14, 2013. Their Lordships were accompanied by the Officers of the Registry.

2. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim & Chairman, Steering Committee attended the e-Court Conference on July 27, 2013 at New Delhi.

His Lordship as the Executive Chairman, Sikkim SLSA and Chairman, High Court Mediation Monitoring Committee also attended the “Eastern Regional Conference on Mediation” at Sesqui Centenary Building, High Court at Kolkata on August 31, 2013. His Lordship was accompanied by Mrs. K.C. Barphungpa, Member Secretary.

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Mt. Khangchendzonga