

Item No. 13

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

06.04.2022
Ct-24

WPA 1774 of 2022
Sri Malay Mukherjee

v.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya
Mr. Goutam Dey
Mr. Kaushal Kumar
Mr. Rajesh Naskar
... for the petitioner.

Mr. Supriyo Chattopadhyay
Ms. Sayantanee Bhattacharjee
... for the State respondents.

Affidavit-in-reply filed by the petitioner in Court today is taken on record.

The petitioner is aggrieved by the order dated January 21, 2022 passed by the Additional District Magistrate (General), Bankura whereby the petitioner being a Field Junior Engineer has been transferred from his present place of posting at Chhatna Block to the Kotulpur Block.

The order of transfer mentions that the same was made in the interest of public service.

According to the petitioner, there is no policy for transfer of the employees under Samagra Shiksha Mission (SSM). Prayer of employees similarly situated as

that of the petitioner seeking transfer, stood refused on the ground that there is no policy for transfer.

The petitioner submits that as there is no specific policy for transfer, the petitioner ought not to be transferred from his present place of posting.

In support of his case the petitioner has relied upon the interim order passed by this Court in A.S.T. 78 of 2018 (Surajit Lahiri & Ors. v. The State of West Bengal & Ors.) on November 20, 2018, wherein the Court relied upon a Memo dated December 13, 2011 issued by the State Project Director to the District Magistrate and District Project Director, Uttar Dinajpur, wherein it was mentioned that there is no provision for transfer of the staff in the State. It was further mentioned that it has been decided that the entire SSA machinery will be geared towards achieving different milestone of the RTE Act and the move to transfer will dislocate the staff and will be detrimental to the functioning of the Mission.

The Court was of the prima facie opinion that the State had a policy not to transfer field engineers appointed under SSM from one place to another.

The petitioner also relies upon an order dated May 23, 2018 passed by a co-ordinate Bench of this Court in WP 6991(W) of 2018 (Sourav Chakraborty v. State of West Bengal & Ors.), wherein the Court was also pleased

to pass an interim order against transfer of the petitioner.

The petitioner also relies upon a communication dated May 25, 2012 by the Additional State Project Director, PBSSM to the Additional District Magistrate (General), Howrah, wherein it has been mentioned that the State Project Office has a policy of 'no transfer' in respect of all categories of staff working under SSA except on administrative compulsions.

The petitioner has annexed with his affidavit-in-reply a communication dated December 1, 2021 issued by the State Project Director, PBSSM to the Joint Secretary & Nodal Officer, School Education Department, Government of West Bengal, wherein it has been mentioned that there is no specific transfer policy for any contractual employee under PBSSM. The prayer of the incumbent, being a Block Level Junior Engineer under SSA seeking transfer, stood regretted.

A report in the form of affidavit has been filed by the Deputy Magistrate & Deputy Collector and District Education Officer, District Bankura, wherein it has been mentioned that as and when administrative exigency required, any Government Employee either permanent or contractual may be transferred in the interest of Public Service. The petitioner was transferred for

administrative exigency and in the interest of public service.

Reliance has been placed on the Declaration-Cum-Form of Contract signed by the petitioner and specially condition six therein.

Paragraph 6 of the terms and conditions of contract mentions that, as per contract the authority may assign any duty to perform 'as and when required'.

It has been submitted that previously the petitioner was transferred from the Sonamukhi Panchayat Samity to Chhatna Panchayat Samity when he did not raise any objection at that point of time. Presently also he ought not to have raised any objection when he is transferred from Chhatna to Kotulpur.

On perusal of the contract, which was signed by the petitioner, it appears that there is a declaration that the authority may assign any duty as and when required. The contract does not mention that the employee may be assigned any duty anywhere in the district or the block concerned. The expression used is – 'as and when required' and not 'as and where required'.

The specific stand of the Additional State Project Director, PBSSM is that the State Project Officer has a policy of 'no transfer' in respect of all categories of staff working under SSA, except on administrative compulsions.

The order impugned does not mention of any administrative compulsion requiring transfer. The expression used in the transfer order is 'in the interest of public service'.

When there is a specific policy of the State not to transfer any staff working under SSA then, in the event, the service of the petitioner is required at any other place, then the same ought to have been specifically mentioned in the order of transfer. Mere mentioning of the expression that the transfer is made in the interest of public service is not sufficient to save the transfer order from the vice of arbitrariness. Something more than the aforesaid usual expression ought to have been mentioned in the order of transfer.

The impugned order of transfer appears to have been issued in respect of as many as six junior engineers with the same expression 'in the interest of public service'. Until and unless there is any clarification with regard to the administrative compulsion for which the petitioner or any other staff of SSA is transferred, the said transfer order will be against the policy of 'no transfer' adopted by the State in respect of SSA staff.

Usually in transfer matters the Courts are loath to interfere as the employer is the best person/authority to decide when and where to utilize the service of the employee, provided of course, there is a transfer policy.

In the absence of a specific transfer policy, the order of transfer ought to clearly spell out the special reason for transfer. More so, when the specific stand of the State and the policy is of 'no transfer'.

Without following the said policy, it appears that, the petitioner has been transferred from his present place of posting.

The fact that the petitioner did not object to his previous transfer does not mean that he loses his right to object in case of future transfers, even if, the same is made against the policy of the State.

In view of the above, the impugned order of transfer dated January 21, 2022 shall not be made applicable in case of the petitioner.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)