

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 14686 of 2025

Mithun Chakrabortty & Ors.
Vs.
The State of West Bengal & Ors.

For the petitioners	:	Mr.Partha Sarathi Bhattacharyya, Sr. Adv. Md. Sarwar Jahan, Adv. Mr. Soumen Barman, Adv. Md. Shahjahan, Adv. Mr. Umenun Khan, Adv.
For the State	:	Mr. Santanu Kr. Mitra, Sr. Govt. Adv. Mr. Subhabrata Das, Adv.
Reserved on	:	August 06, 2025
Judgment on	:	August 25, 2025

Aniruddha Roy, J.

FACTS :

1. The petitioners pursuant to the recruitment notices issued in the year 2006, 2018 and 2021, participated in the recruitment process and ultimately they were engaged for the post of **District Accounts Manager** (for short the said post) on contractual basis at the respective districts for the Programme Management Unit (PMU) under RCH-II which is a component of National Rural Health Mission.

2. The appointment was purely contractual against a monthly consolidated remuneration initially for a period of 11 months, as would be evident from the engagement letter **Annexure P-2 at page 22** to the writ petition.

3. The contractual period of the petitioners was extended from time to time and accordingly, the engagement of the petitioners was renewed. At no point of time either in the engagement letter or during the time of renewal, no condition for transfer of employee was imposed by the authority. The petitioners do not receive any house rent allowance, provident fund benefit, pension, gratuity or any social security including terminal benefits.

4. There has been no condition of employment of the petitioners, either express or implied that the West Bengal State Health and Family Welfare Samity or District Health and Family Welfare Samity or Block Health and Family Welfare Samity has any right to transfer the petitioners from their place of engagement to any other place.

5. Suddenly on **June 25, 2025**, the Mission Director, National Health Mission and Executive Director, West Bengal Health and Family Welfare Samity (for short the Welfare Samity) issued a transfer order dated **June 25, 2025, Annexure P-4 at page 41** to the writ petition, in exercise of authority under **Clause 1.3** of the Transfer Guideline dated **May 26, 2022, Annexure P-5 at page 44** to the writ petition.

6. The petitioners alleged that prior to issuance of the said transfer order dated June 25, 2025, the petitioners were not aware of about any

transfer Guideline nor the petitioners were made aware of the same at the time of their engagement or during the renewal of their contractual employment.

7. On the basis of the said impugned transfer order, the petitioners were directed to shift at the transferred place without any further or additional benefit.

8. Thus, the petitioners being aggrieved with the said transfer order dated June 25, 2025, has filed the instant writ petition with the following prayers :-

- a) Writ of or in the nature of Mandamus Commanding and/or directing the respondents, their men, agents, subordinates and each one of them to cancel, rescind and/or withdraw the Order being Memo No. HFW-27099/444/2024/1616 dated 25.06.2025 issued by the Mission Director, NHM and Executive Director, West Bengal State Health and Family Welfare Samity, immediately;
- b) Writ of or in the nature of Mandamus Commanding and/or directing the respondents, their men, agents, subordinates and each one of them not to give effect and/or further effect of the Transfer Guideline of Contractual HR under National Health Mission, West Bengal issued by the Executive Director, West Bengal State Health and Family Welfare Samity & Mission Director, National Health Mission, West Bengal vide Memo No. HFW/NHM-466/2020/Pt-1/356 dated 26.05.2022 petitioners; in respect of the petitioners;
- c) A writ of or in the nature of Certiorari calling upon the respondents to produce before the Hon'ble Court all the records relating to and arising out of the present case and upon perusal of such records conscionable justice may be done to the Petitioner by issuing appropriate writ order or orders.
- d) Rule NISI in terms of prayer (a), (b) and (c) above and make the Rule absolute if the respondents fail to show sufficient cause or return.

- e) An interim order of injunction directing the Respondents, their men, subordinates, agents and each one of them not to give any effect and/or further effect to the Order being Memo No.HFW-27099/444/2024/1616 dated 25.06.2025 issued by the Mission Director, NHM and Executive Director, West Bengal State Health and Family Welfare Samity till the disposal of the writ petition.
- f) Ad-interim order of injunction in terms of prayer (e) above.
- g) Such other or further order or orders as to Your Lordships may deem fit and proper.
- h) Cost of incidental to this writ application.
- i) Leave may be granted to move the writ petition without complying the requirement of Rule 26 of the Rules relating to Application under Article 226 of the Constitution of India;

9. Pursuant to the direction of this Court, report on affidavit has been filed on behalf of the respondent No.6. The petitioners have also filed their exception on affidavit to the said report.

SUBMISSIONS :

10. Mr. Partha Sarathi Bhattacharyya, learned Senior Advocate appearing for the petitioners submits that the recruitment of the petitioners took place under a particular contract. The contract provides for employment of the petitioners at a particular position at the district level for the post of Accounts Officer and there was no condition either express or implied for transfer. The petitioners are supposed to work under the contract at a particular place for which they were engaged and in absence of any provision for transfer under the contract, the petitioners cannot be transferred by the Welfare Samity.

11. Immediately, upon issuance of the said impugned transfer order, the petitioners through their respective e-mails on June 29, 2025, submitted representations before the said Welfare Samity requesting it to withdraw the transfer order and not to give any effect to the alleged Transfer Guideline, **Annexure P-6 at page 49** to the writ petition.

12. Referring to diverse provisions from the Guidelines on Human Resources for Health, National Health Mission, 2022 (for short NHM-Guideline), Mr. Bhattacharyya submits that the employment should not be subject to any routine transfer. Transfer may be entertained in certain exceptional circumstance, such as, spousal colocation and mutual transfer, where both the employees at the same level with the same educational qualifications, if want transfer for personal/family reasons. According to learned Senior Advocate appearing for the petitioners, the other exception could be to transfer an employee to a post which is lying vacant and the particular employee desires the transfer because of its family/personal reasons. Other than these, there was no scope for any transfer at the instance of the Welfare Samity.

13. Mr. Bhattacharyya, learned Senior Advocate further submits that the engagement of the petitioners are not against any permanent public post. The petitioners are the employees of the said Welfare Samity and not of the State against any sanctioned post. Hence, transfer cannot be treated as an incidence of service of the petitioners. Since the contract under which the petitioners were engaged and were renewed from time to time does not provide any provision for transfer to any other place other than the place at which they are employed. The impugned order of

transfer including the transfer policy, if any, are bad in law and liable to be set aside.

14. Per contra, Mr. Santanu Kr. Mitra, learned Senior Government Advocate appearing for the State with Mr. Subhabrata Das, learned Advocate, at the threshold referring to pages 50, 52, 56, 59, 62 and 65 to the writ petition submits that the petitioner Nos.1, 4, 7, 8, 9 and 10 through their respective e-mails dated June 29, 2025, accepted the transfer provided some monetary benefits are granted to them as mentioned in their representations. He further submits that the transfer guideline came into force on May 26, 2022. Prior thereto, on December 14, 2015 and June 4, 2018 at Pages 59 and 61 to the writ petition, petitioners Nos.4 and 8 asked for transfer.

15. Learned State Counsel submits that the petitioners being contractual employees do not have any legally enforceable right praying for issuance of mandamus. Whatever rights the petitioners have, if any, the same would flow from the contract itself. The petitioners are engaged against temporary post and no vested right is created in favour of the petitioners against the post or against any sanctioned post.

16. Referring to the recruitment notice dated February 27, 2014, at Page 18 to the report on affidavit filed on behalf of the Welfare Samity, the learned State Counsel submits that the engagement was mentioned to be anywhere in West Bengal as place of posting.

17. Learned State Counsel then refers to the renewal of engagement dated August 1, 2017, at Page 21 to the writ petition to show that place

of posting was anywhere in West Bengal. He then refers to the Transfer Guideline dated May 26, 2022, at Page 30 to the writ petition. Under **Clause 1.3** of the said Transfer Guideline, it is clearly mentioned that transfer on administrative ground can be made by the authority at any point of time and by exercising the said power, the Welfare Samity had issued the said transfer order. Learned State Counsel then refers to the resolution of the 24th meeting of the HR Advisory Committee at Page 41 to the writ petition. Referring to **Clause 8** from the said resolution, he submits that in partial modification of the said transfer policy dated May 26, 2022, it was decided that any employee who has applied for transfer and has been transferred will not be eligible for further transfer for the next three years subject to his renewal of his contract with effect from the issuance of the transfer order. The said clause further mentions that however, the said criteria will not be applicable for transfer on **administrative ground** or on severe medical reasons.

18. Referring to the renewal of contract dated October 16, 2023, Annexure-R5 at Page 46 to the report, learned Counsel submits that the contract was renewed as per the terms and conditions mentioned in **Annexure-A** and format mentioned in **Annexure-1** thereto. **Annexure-A** at page 48 to the said report, *inter alia*, contains Clause 8 which provides that transfer will be guided as per the said transfer policy dated May 26, 2022 which, *inter alia*, provides for Clause 1.3 being transfer on administrative ground can be made by the authority at any point of time. On the basis of the said clause, the transfer order was issued on June 25, 2025 at Page 41 to the writ petition.

19. Learned State Counsel then further refers to last renewal of contract dated March 26, 2025, **Annexure R-6** to the report.

20. Mr. Mitra, learned Counsel appearing for the State submits that by virtue of accepting the said renewal from time to time, the petitioners had accepted the provisions for transfer engrafted in their service contract. As such, the said transfer order dated June 25, 2025, is lawful and valid.

21. Mr. Mitra, further submits that transfer is an incidental to service. Unless the transfer is resulted of malice or arbitrariness, the same should not be interfered with. No case of mala fide has been made out in the writ petition. In support, he has relied upon the following two decisions of the Hon'ble Supreme Court

(i) *In the matter of : Rajendra Singh and Others vs. State of Uttar Pradesh and Others reported at (2009) 15 SCC 178,*

(ii) *In the matter of : State of Rajasthan vs. Anand Prakash Solanki reported at (2003) 7 SCC 403.*

22. To explain administrative exigency which vests power on the employer to transfer its employee, Mr. Mitra has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : K. B. Shukla and Others vs. Union of India and Others reported at (1979) 4 SCC 673.***

23. In the light of the above, Mr. Mitra submits that the writ petition should be dismissed, as the petitioners had already accepted the transfer as a condition of their employment.

24. In reply, Mr. Partha Sarathi Bhattacharyya, learned Senior Counsel appearing for the petitioners submits that the petitioners are contractual employees and not engaged against any sanctioned post. The petitioners cannot be termed to be in public employment. Therefore, the transfer cannot be an incidence of the service of the petitioners. Accordingly, Mr. Partha Sarathi Bhattacharyya, distinguished the judgments relied upon by the learned State Counsel.

25. Mr. Partha Sarathi Bhattacharyya, further submits that the principle laid down in the ratio of a judgment has to be read in the light of the particular facts situation on which the judgment has been delivered. The judgments cited by the learned State Counsel are also distinguishable on facts and the ratio therein, are not applicable in the facts of this case. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of : The Regional Manager and Others vs. Pawan Kumar Dubey, reported at AIR 1976 SC 1766.***

DECISION :

26. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the facts admitted are that the petitioners were engaged as contractual employees. The contract was renewed from time to time by incorporating various terms. The petitioners are working upon execution of fresh contracts and/or upon renewal thereof. The law is well settled that with the execution of new contract and/or by incorporation of new terms in the

contract, the original contract either stands modified partly or wholly or stands novated partly or wholly, as the case may be.

27. The transfer policy/guideline dated May 26, 2022, Annexure P-5 at page 44 to the writ petition is also admitted document and **Clause 1.3** thereof, inter alia, provides that transfer on administrative grounds can be made by the authority at any point of time.

28. The impugned transfer order dated June 25, 2025, Annexure P-4 at page 41 to the writ petition, has also been issued in exercise of the authority under the said Clause 1.3 of the transfer guideline.

29. The renewal of contract for engagement of the petitioner dated August 1, 2017, and the last one dated March 26, 2025 at page 51 to the report filed by the respondents clearly show that the transfer clause was duly incorporated in the renewed contract. Therefore, petitioners cannot contend that the contract under which the petitioners are working does not include the provisions for transfer. The judgment of the Coordinate Bench dated February 4, 2022, ***In the matter of : Sanghamitra Ghosh vs. State of West Bengal and Others rendered in WPA 19243 of 2021***, relied upon on behalf of the petitioners is clearly distinguishable on these facts that in the instant case the contract under which the petitioners are working included the provision for transfer. Therefore, the ratio decided ***In the matter of : Sanghamitra Ghosh (supra)*** has no application in the facts of the instant case.

30. On meaningful reading of the provisions from said NHM guidelines, this Court is of the firm opinion that, the guidelines mentioned therein

are merely indicative and are suggestive in nature, as would be evident from **Clause 1.1 – purpose of guidelines**, of the said guidelines. These guidelines are not directives. Thus, the said guidelines would have no binding force.

31. As contended on behalf of the petitioners that since the employment of the petitioners are contractual, not against any sanctioned post and neither in the nature of public service, transfer cannot be considered to be an incidence of service of the petitioners, is of no relevance or consequence in the facts and circumstances of this case. In the instant case, the employment of the petitioners are purely contractual and the last renewed contract shows that transfer is one of the terms engrafted in the contract. The petitioners having executed the said contract cannot contend anything to the contrary.

32. Inasmuch as, through the representation submitted through e-mails all dated June 29, 2025, some of the petitioners have accepted the transfer subject to some monetary benefits and some of the petitioners have already asked for transfer even before the transfer guideline was effected. Thus, records show the petitioners on principle have accepted transfer.

33. Since the transfer clause is an integral part of the contract under which the petitioners are working, this Court is of the opinion that the judgments relied upon by both the parties are not required for any further discussion.

34. In view of the forgoing reasons and discussions, this Court finds that the writ petition is totally devoid of merits. The transfer order dated June 25, 2025, is not interfered with and stands **affirmed**.

35. Accordingly, the writ petition being **W.P.A. 14686 of 2025** stands **dismissed**, without any order as to costs.

36. Photostat certified copy of this Judgment, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)