

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

Present:
The Hon'ble Justice Aniruddha Roy

W.P.A. 24352 of 2024

Sandip Kumar Bardhan
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Saibal Acharya, Adv. Mr. Ambu Bindu Chakraborty, Adv. Ms. Mrinmoyee Roy Chowdhury, Adv. Mr. Ansar Mandal, Ld. AGP Mr. Tanweer J. Mandal, Adv.
For the State	:	Mr. Biplab Guha, Adv. Ms. Amrita Tiwari, Adv.
Reserved on	:	June 11, 2025
Judgment on	:	July 10, 2025

Aniruddha Roy, J.

FACTS :

1. By virtue of a letter of engagement dated **March 26, 2010, annexure- P2 at page 17** to the writ petition, the petitioner was engaged as a **Field Junior Engineer** of Purbasthali-II Block for a period of twelve months on **contractual** remuneration basis. The petitioner was posted for the said post for Sarva Shiksha Mission work as would be evident and posting letter dated March 19, 2010, annexure- P1 at page 16 to the writ petition. The engagement of the petitioner subject to the terms and

conditions of the contract, was extended by a memo dated March 01, 2011, annexure-P3 at page 18 to the writ petition, until the age of attainment of 60 years. The petitioner was entitled to receive as one time gratuity of Rs. 1,00,000/- if 10 years of service is provided by him to Sarva Shiksha Mission. The consolidated remuneration was Rs. 16,076/- per month.

2. In July 2012, the petitioner was transferred to Galsi-I Block. The petitioner accepted the same. Again by virtue of memo dated June 6, 2016 the petitioner was transferred from Galsi-I to Durgapur M.C. with the additional charge of Durgapur Faridpur, annexure- P4 at page 19 to the writ petition.

3. The petitioner then by virtue of a memo dated June 20, 2018 was again transferred from Durgapur Faridpur to Kansa with an additional charge of Durgapur Municipal Corporation (MC), annexure- P5 at page 20 to the writ petition.

4. By virtue of a further memo dated October 12, 2022 the petitioner was again transferred from Kansa Block to Pandabeswar Block Headquarter. The petitioner is a resident of Raniganj, annexure- P6 at page 21 to the writ petition.

5. Again, by virtue of a memo dated **January 13, 2023**, the petitioner was transferred and posted at Purbasthali-II with an additional charge of Durgapur Municipal Corporation (MC), annexure- P7 at page 22 to the writ petition. The petitioner has come to learn from a Government memo dated March 13, 2020, annexure- P9 at page 29 to the writ petition, that

there is no specific policy for transfer of any category of staff under Paschim Banga Samagra Shiksha Mission ('for short' PBSSM).

6. Then again by a further memo dated **May 22, 2023**, the petitioner was transferred from Pandabeswar Block to Purbasthali-II on the alleged ground of public service.

7. The petitioner submitted representations from time to time but the same have not been considered. Challenging the said last impugned transfer order dated **May 22, 2023**, annexure- P10 at page 30 to the writ petition, the petitioner has filed the instant writ petition praying for quashing of the same.

8. Pursuant to the directions made by the Coordinate Bench, the respondents have filed its report in the form of affidavit on behalf of the respondent no. 4 to which the petitioner has filed its exception in the form of affidavit.

SUBMISSIONS :

9. Mr. Saibal Acharya, learned Counsel appearing for the petitioner submits, referring to the engagement letter of the petitioner, that the petitioner was engaged on contractual basis. The contract between the petitioner and the State employer for his engagement does not provide for any provision for transfer. The contractual employment being a result of a contract, is only abide by the subject contract between the employee and its employer and not otherwise.

10. Mr. Acharya, learned Counsel appearing for the petitioner then submits that since engagement, the petitioner was transferred frequently

from one place to another and the duration between the last two transfers was of 4 or 5 months. The transfer order dated January 13, 2023, annexure- P1 at page 22 to the writ petition was from Kansa to Durgapur (MC) and the last impugned order was from Purbasthali-II to Paschim Bardhaman. This according to the petitioner, is clearly in colourable exercise of power and tainted with malice on the part of the State employer. The petitioner prays for quashing of the impugned transfer order dated May 22, 2023. In support, learned Counsel for the petitioner has relied upon two orders of Coordinate Bench, which are :

(i) The order dated September 12, 2023, In the matter of: Rupak Dey Vs. The State of West Bengal & Ors. rendered in WPA 19649 of 2022 and

(ii) The order dated February 27, 2024, In the matter of: Sandeep Hazra Vs. State of West Bengal & Ors. rendered in WPA 28573 of 2023.

11. In the light of the above, Mr. Acharya submits that the instant writ petition should be allowed.

12. Mr. Biplab Guha, learned Counsel appearing for the respondents submits that the appointment of the petitioner was purely contractual. Administrative exigency on the part of the employer demanded the transfer of the petitioner and the petitioner was transferred accordingly. The decision for transfer of an employee is the discretion and policy decision of the employer and the same should not be intervened by this Court. The impugned transfer order has been made in public interest.

13. Learned counsel for the respondents further submits that transfer is an incidence of service. There is no malice or arbitrariness in the facts of the instant case, while issuing the last transfer order dated May 22, 2023, being impugned herein. The petitioner has accepted the transfer throughout. The petitioner has therefore, accepted the power and authority of the State employer who transferred the petitioner from one place to other.

14. In the light of the above, learned Counsel for the respondents submits that this writ petition is devoid of any merit and should be dismissed.

DECISION :

15. After considering the rival contentions of the parties and upon perusal of the materials on record, two facts are glaring and admitted. Firstly, the petitioner is a contractual employee. Since his engagement, on several occasions, the petitioner was transferred at the instance of his employer and the petitioner accepted the same and has acted thereupon. Secondly, the duration between the last two transfers being the transfer order dated **January 13, 2023**, at page 22 to the writ petition and the impugned one being **May 22, 2023**, annexure-P10 at page 30 is about **4 to 5 months**.

16. The law is well settled that transfer on administrative exigency/ public purpose is always at the discretion of the employer, and so long the said discretion of the employer is exercised judiciously and not in a colourable exercise of power and not tainted with malice and

arbitrariness, the same shall not be interfered with by the Court. The law is equally well settled that if the discretion exercised by the employer is found to be arbitrary, in colourable exercise of its power and/or tainted with malice, this constitutional Court in exercise of its power under Article 226 of the Constitution of India, can always interfere with arbitrary exercise of such discretion.

17. In the facts of this case, the terms and conditions of contractual appointment of the petitioner whether provides for transfer or not will be of no consequence and without any avail to the petitioner because the petitioner has already accepted transfer on repeated occasions, as would be evident from record. The petitioner is, thus, estopped and acquiesced from contending anything to the contrary. Upon accepting transfer, the petitioner himself have altered and modified the terms and conditions of contractual appointment and has waived his right to contend that transfer is not permitted under the contract between him and his employer.

18. However, from the facts of this case, as would be evident from record, it is clear to the mind of this Court that the duration between the last two transfers being for about 4 or 5 months, the impugned transfer of the petitioner by virtue of the said impugned transfer order dated **May 22, 2023**, annexure-P10 at page 30 to the writ petition, was not in judicious exercise of discretion on the part of the employer. This Court is of firm and considered view that the discretion exercised was, if not tainted with malice, but definitely arbitrary and in colourable exercise of power and authority of the employer.

19. In view of the foregoing reasons and discussions the **impugned transfer order dated May 22, 2023, annexure- P10 at page 30 to the writ petition**, stands **set aside** and **quashed**.

20. The petitioner shall forthwith join his posting at the place where he was posted last before the impugned transfer order dated May 22, 2023 was issued, positively within a period of **Seven Working Days** from date and the respondents employer shall allow the petitioner to resume to his duty then and there upon compliance of necessary formalities.

21. However, this order shall not preclude the respondent/employer from taking further step in accordance with law and by exercising its discretion judiciously following due process of law, in the event any real and genuine administrative exigency occurs requiring transfer of the petitioner.

22. With the above observations and directions, this writ petition being **W.P.A. 24352 of 2024** stands **allowed**, without any order as to costs.

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

(Aniruddha Roy, J.)