

22nd June, 2026
(D/L No.57)
Ct. No.4
(SKB)

**F.M.A. 626 of 2026
With
CAN 1 of 2026**

Alisa Rahaman
Versus
The State of West Bengal and others

Mr. Soumya Ray,
Ms. Reshmi Mukherjee,
Mr. Ashok Halder,
Mr. Debapratim Lodh,
Mr. Pramit Panda,
Mr. Ribhu Gupta

... for the appellant.

Mrs. Chandreyi Alam, Id. AGP,
Ms. Kakali Dutta

... for the State.

1. Heard the learned advocate for the writ petitioner/appellant.
2. The present Intra Court Appeal arises out of an order dated 17.04.2026 passed on the petitioner's writ petition whereby and whereunder the petitioner's prayer to interfere with the discretion of the authority to keep her transfer in contemplation of disciplinary proceeding in abeyance; and to direct the authority to release her for transfer was rejected.
3. The writ petitioner/appellant is working as Health Assistant (Female) wherein she leads the team in a sub-centre for providing

immunization, maternal and child health services and family planning services, apart from other services in the sub centre. Her name figured in a transfer order dated 11.12.2025 transferring her from Murshidabad to Cooch Behar. She was not relieved as a result of transfer order. She, therefore, approached the writ court seeking direction that she be relieved for her transfer to Cooch Behar, which has been rejected by the writ court.

4. The learned advocate for the writ petitioner/appellant has made three fold submissions. Firstly, he submits that merely in contemplation of a departmental proceeding, she was asked to continue at Murshidabad and not relived pursuant to the transfer order in question. The same is impermissible in view of the decision of the Apex Court in the case of ***Union of India and others Vs. K. V. Jankiraman and others*** reported in ***(1991)4 SCC 109***. A second submission is made that others whose names figured in transfer order dated 11.12.2025 were relieved and, therefore, the appellant has been discriminated. The third submission advanced on behalf of the petitioner/appellant is that the transfer was issued at the directorate level whereas it is

apparent from the report filed in the writ proceeding that the decision not to relieve the petitioner/appellant in compliance of the transfer order is that of the Chief Medical Officer of Health, who is below the Directorate. He, therefore, submits that the impugned action of not relieving the petitioner/appellant in compliance of the transfer order is unsustainable. In this connection, he has relied upon a decision of the Apex Court in the case of ***State of U.P. and others Vs. Gobardhan Lal*** reported in ***(2004)11 SCC 402***.

5. We have considered the submissions advanced on behalf of the writ petitioner/appellant. In so far as reliance placed on the decision of the Apex Court in the case of ***K. V. Jankiraman and others (supra)***, we find that the same has no application to the facts and circumstances of the present case for the reason that an issue arising for consideration in the judgment relied upon was whether in contemplation of a proceeding and prior to issuance of a charge memo, an employee can be deprived benefits of promotion.
6. The issue of transfer being withheld or directed in contemplation of an enquiry did neither arise for consideration before the Apex Court nor was

considered. The judgment, therefore, has no application to the present case.

7. In so far as decision in the case of **Gobardhan Lal (supra)** is concerned, the petitioner/appellant has relied on paragraph 7 of the judgment, which reiterates the very well settled limits of the jurisdiction of a court to interfere with a transfer order, primarily on the ground of a transfer order being contrary to statute by an authority below the competent authority, vitiated by proving *mala fides* or transferring an incumbent to a lower post.
8. In the present case, the petitioner/appellant tries to sustain reliance on this judgment by referring to a report filed in the earlier writ proceeding to contend that the effect of the transfer order from the directorate was interfered with by a Chief Medical Officer of Health. We find no force in such submission. The report being relied upon merely places on record the instructions received from the department. The report is not an order interfering with the petitioner's/appellant's release for transfer in compliance of the transfer order. It merely communicates the position of the State which is apparent from paragraphs 9 and 10 of the report which reads as follows:

“9. As no reliever has been posted against Chachanda II Sub centre, and considering public interest first and foremost in line with the reasoned order, she cannot be released right now and will have to wait for next batch to join. Moreover, her case for transfer also does not hold ground as she has not completed three years of service which is mandatory. If she is released without completion of her tenure of three years it will set a precedence in future which cannot be entertained.

10. It is very well known to the petitioner that this is a transferable job, and postings are not always in favourable positions. In patient care services under Health Department, relievers are extremely important to maintain continuous service.”

9. A submission that the report is an order by a lower authority, the Chief Medical Officer of Health withholding the petitioner's/appellant's release in compliance of a transfer order issued by the Directorate is not supported by the Report relied upon, and is unsustainable in facts as well as in law.

10. The third submission regarding discrimination has no legs to stand upon. It is not the petitioner's/appellant's case that the others in respect of whom the common transfer order was issued were also proceeded against or there was a contemplation to departmentally proceed against them requiring them not to be released in compliance of the transfer order. A plea regarding discrimination is, therefore, untenable in the present case.

11. From the report filed by the respondents in the writ proceeding, extracted above we find that no reliever was posted against the posts on which the petitioner was posted at Chachanda II sub-centre. Considering public interests the authorities, therefore, have taken a stand that the petitioner cannot be released and will have to wait for the next batch to join. The authorities further stated that she has not completed her three year mandatory tenure at the present place of posting. The requirement of maintaining health/patient care services at the sub-centre in question has also been considered by the authority so as to sustain petitioner's retention at the sub-centre in question. The reasons assigned in the report in our opinion leave no scope for the petitioner to assert any right to be transferred from the sub-centre in question.

12. The law as regards right of an employee in relation to a transfer by now is well settled through various judgments delivered by the Apex Court in this regard. It is by now established law that the transfer is not only an incident inherent in terms of appointment but also implicit as an essential condition of service. Unless transfer is shown to be outcome of *mala*

fide exercise of power, violates any statutory provision or by an incompetent authority the writ Court should refrain from interfering with the authorities prerogative to transfer. The petitioner's claim for transfer or release in terms of a transfer order, when the authorities for sufficient reasons have decided not to relieve him is also required to be considered, keeping in background the above noted proposition to law which is apparent from decision of the Hon'ble Supreme Court of India in ***Gobardhan Lal (supra)***. The issue has also been considered in a more recent judgment of the Apex Court in the case of ***Pubi Lombi Vs. State of Arunachal Pradesh and others*** reported in ***(2024) 12 SCC 292*** wherein the same legal proposition has been reiterated.

13. We, therefore, find no reason to interfere with the decision of learned single judge in the appeal. The appeal is dismissed.

14. The application being CAN 1 of 2026 is, thus, disposed of.

(Madhuresh Prasad, J.)

(Biswaroop Chowdhury, J.)