

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 19.03.2026

DELIVERED ON: 17.04.2026

PRESENT:

THE HON'BLE MR. JUSTICE REETO BROTO KUMAR MITRA

WPA NO. 12310 OF 2025

DR. ASFAKULLA NAIYA

- VERSUS -

THE STATE OF WEST BENGAL AND ORS.

Appearance:

Mr. Samim Ahammed, Adv.

Mr. Arka Maiti, Adv.

Ms. Gulsanwara Pervin, Adv.

Ms. Saloni Bhattacharya, Adv.

Ms. Reshma Khatun, Adv.

..... for the Applicant/Petitioner

Mr. Kalyan Bandopadhyay, Sr. Adv.

Ms. Pramiti Banerjee, Adv.

Mr. Arka Nag, Adv.

Mr. Debayan Sen, Adv.

Mr. Niket Ojha, Adv.

..... for the State

Mr. D. N. Maiti, Adv.

Mr. A. Santra, Adv.

..... for the respondent no. 5

Reetobroto Kumar Mitra, J.:

1. The petitioner is aggrieved that he has been posted from the medical college of his choice in Hooghly, while serving as a senior resident to Purulia.
2. The petitioner is a qualified medical practitioner, having successfully completed his post-graduate degree in Oto-rhino-laryngology from the Medical College, Kolkata, which is affiliated to the West Bengal University of Health Sciences (for short, "WBUHS"). The petitioner is duly registered with the Medical Council in the batch of 2021-2024. The petitioner participated in the counselling process and had also executed a bond, required of persons willing to serve as senior resident based on their final MD examination marks, in terms of the notification dated February 20, 2025, which invited eligible candidates to participate in the centralized counselling process for selection and posting of incumbents to various government hospitals in West Bengal.
3. Upon participation, the petitioner secured meritorious rank in the merit list of Oto-rhino-laryngology and was allotted the post of senior resident, based on his merit rank in Profulla Chandra Sen Government Medical College and Hospital, Hooghly. This was on the basis of the option exercised by the petitioner, on the basis whereof he has also made a self-declaration for SR bond engagement. This was in terms of the self-

declaration given by the petitioner that he was willing to be engaged in Profulla Chandra Sen Government Medical College and Hospital, Hooghly under the indemnity bond. The self-declaration was given on May 3, 2025.

4. Petitioner had been given a posting from the hospital of his choice, that is Profulla Chandra Sen Government Medical College and Hospital, to Deben Mahata Government Medical College and Hospital, Purulia, a facility not chosen by the petitioner in the course of counseling.
5. Mr. Samim Ahammed, appearing for the petitioner, has raised the following issues:
 - a. The posting of the petitioner is contrary to the self-declaration that he would not seek any change from the place of engagement opted by him, which was finalised.
 - b. The Standard Operating Procedure (hereinafter “SOP”) envisaged in the Memo No. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated February 16, 2023 (page 82 of the writ petition) has been grossly violated.
 - c. The engagement of the senior resident is strictly conducted through a structured and merit-based counseling process;

clause 7(a) stipulates that a post graduate degree holder will be engaged as a senior resident in medical colleges/teaching institutions for one year through counseling based on a merit list.

- d. After completion of one year of bond service, the incumbent will be posted in a secondary tier hospital or a rural hospital through a second round of counseling based on the very same merit list. In fact, clause 7(d) makes it clear that pending final marks, temporary placement may be made at the parent institutions, though final posting must be strictly in accordance with the SOP.
- e. Of the entire list of 871 candidates, there has been a selective procedure adopted for only a few persons, including the petitioner, which is in violation of the SOP.
- f. The SOP has been followed for all the other 869 candidates but not for the petitioner and a few others.
- g. He submits that, of the 778 candidates for the batch of 2020-2023, only one doctor was posted in violation of the SOP. Thus, a total of three doctors out of the entire 1,649 candidates were posted in deviation, if not in violation, of the

SOP. All three had actively participated in the protest following the death of a junior doctor at R.G. Kar Medical College & Hospital on August 9, 2024.

- h. Hence, the petitioner submits that the selective alteration of posting in the case of the petitioner is nothing but a retributory action on the part of the concerned authority, which amounts to administrative mala fide. This retributory action is punitive in nature, designed to isolate, harass, and penalize the petitioner.
- i. The concept of malice in law stems, in this case, from the participation in the protest regarding an unfortunate event that had unfolded in the R. G. Kar Medical College and Hospital. Thus, the administrative bias was really in the nature of a retaliatory measure to teach the petitioner a lesson, under the garb of an administrative requirement which allegedly warranted such transfer.
- j. The petitioner has relied upon a decision of this Hon'ble Court by the learned Single Judge in WPA 12496 of 2025 (Dr. Aniket Mahata -vs- The State of West Bengal & Ors.), which was duly affirmed by a Division Bench of this Hon'ble Court in MAT 1736 of 2025 (State of West Bengal & Ors. Vs. Dr.

Aniket Mahata & Ors.), as well as the fact that the order of the Division Bench has been upheld by the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No(s). 35788/2025 on December 11, 2025.

6. Thus, in view of the aforesaid submissions, the petitioner ought to be re-posted to the original college of his choice, Profulla Chandra Sen Government Medical College and Hospital, and the transfer by way of Memo No. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025, should be set aside.
7. Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing for the respondent, has defended the order of transfer on the following grounds:
 - i. The petitioner, having executed the bond, has agreed of his own volition to a posting in any medical college/hospital in the State of West Bengal, which includes any rural posting. Hence, the petitioner cannot challenge or question the factum of his posting at a college in Purulia.
 - ii. Thus, the transfer of the petitioner cannot be termed as unjust, arbitrary, or retaliatory in any manner whatsoever.

- iii. In so far as the applicability of the decision in Dr. Aniket Mahata (supra) is concerned, the instant case is not distinguishable in any manner, either on facts or otherwise.
- iv. However, he submits that the State is well within its right to transfer a petitioner. The self-declaration does not entitle an incumbent to appointment/posting in that medical institution alone.
- v. The petitioner, while executing the bond, makes a specific declaration that he is willing to work in multiple speciality/super speciality hospital/secondary/tertiary level hospitals in West Bengal for a continuous period of three years. Thus, the petitioner by his own accord has agreed to serve the State in any medical college, as specified in the bond, throughout the State of West Bengal. Hence, he cannot claim a right not to be transferred from the college of his choice for the entire tenure of three years.
- vi. He has placed reliance on three decisions of the Hon'ble Supreme Court of India:-
 - a. 1989 2 SCC 602;

- b. 2009 11 SCC 678; and
 - c. 2022 12 SCC 1.
- 8. I have heard learned counsel for the parties and perused the record and gone through the material on record.
- 9. A few admitted facts are relevant before embarking on the adjudication of this matter.
- 10. The admitted facts are summarised as under:-
 - a. The petitioner is a successful candidate, securing a fairly high rank in the merit list, thereby entitling him to a posting in the institution of his choice.
 - b. The petitioner had executed a self-declaration form for SR bond engagement affirming that he would not request any change of the place of engagement. The place of engagement was given as the Profulla Chandra Sen Government Medical College and Hospital, Hooghly.

- c. In the final engagement list, the petitioner was found to have been posted at Deben Mahata Government Medical College and Hospital, Purulia.
11. On this very short conspectus, the disputes have arisen.
12. Doctors with requisite qualification, as specified from time to time, are given the option to apply and obtain posting as senior resident on the basis of merit list and on the basis of the counselling rounds. The SOP contained in Memo No. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated 16th February, 2023, clarifies in clause 6 that the Director of Medical Education will arrange to collect the particulars of all candidates from the concerned medical colleges, which would include, amongst others, the rank obtained in the final MD examination. The Directorate of Medical Education would thereafter, along with the concerned Branch of the Department (MERT), arrange engagement of such candidates completing post-graduate degree at different hospitals/teaching institutions as senior resident for initial one year through counselling process based on merit list prepared on the basis of the collected stated particulars (as in clause 6) of SOP.
13. The SOP also specifies that after completion of the first year as per the bond service by such candidates, the Director of Health Services along with the concerned Branch of the Department (HS-MA) will arrange for

appointment of such candidates at different secondary tier hospitals and rural hospitals in the State as Senior Resident “through further counselling”, “based on the merit list already prepared” on the basis of collected stated particulars. Thus, the stated particulars and the counselling process will together form the merit list which will decide as to how a candidate will be posted. Thus, the higher the rank of the candidate and depending on his choice, the more likely he is to get a college of his choice/preference. Thus, if a candidate has chosen a particular hospital, he has the right to be posted there provided no other candidate with a better rank than him has already opted for that particular seat or for that particular seat in that hospital.

14. If higher ranked candidates have already opted for a particular post in a particular hospital as senior resident, lower rank candidates even if it is their first preference in that particular college will not get posted there.
15. This is the process of posting of a candidate to a particular college.
16. The SOP, as devised by the State, is merely a mechanism for deployment of the concerned doctor as a Senior Resident. The SOP contains the entire process for such deployment upon completion of the course, whether a degree or diploma. Merit-based selection cannot be construed as being applicable only to counselling, as that would destroy the very fabric of an impartial and transparent system of appointment.

17. Thus, the SOP is not a mechanism only for the purpose of counselling and has to be strictly followed, and has in fact been strictly followed in 869 other cases for deployment of doctors as Senior Residents. The State, having laid down the SOP itself, cannot, at its own whims and fancies, depart or deviate from the SOP. In fact, it has not departed or deviated in respect of 869 out of 871 candidates. It is only in the case of two candidates, including the petitioner herein, that such deviation has been made. The same is apparently without any reason.
18. Perhaps, the only situation in which the State can exercise any discretion in making an appointment is as mentioned in the memo dated March 4, 2025: registration has not been completed by March 10, 2025. It is only in that particular situation that the State can deploy the candidate in the remaining vacancies available after the counselling process. Beyond this, the State cannot exercise any discretion, particularly if the same is in derogation of the SOP established by the State.
19. It may also be noted that in a similar matter a coordinate bench of this Hon'ble Court in the case of Dr. Aniket Mahata (supra) had set aside the posting of a candidate similarly situated, that is, within the merit list but not getting the posting of his preferred hospital. This decision has been upheld by a Division Bench of this Hon'ble Court by an order and judgment in the case of MAT 1736 of 2025 (State of West Bengal & Ors. Vs. Dr. Aniket Mahata & Ors.) dated November 6, 2025, which was also carried

before the Hon'ble Supreme Court of India but was not entertained, as would appear from the order dated December 11, 2025.

20. The SOP has been formulated to ensure transparency, clarity, and to maintain fairness and balance in the issue of posting/deployment of doctors as senior residents. If the mandate of the SOP has been followed in the case of 869 out of 871 doctors, there is absolutely no ground for the State to say that the SOP does not apply to the petitioner or that the petitioner is required elsewhere (Purulia) rather than at Hooghly.
21. If merit-based criteria is not a qualifying parameter for engagement, then the choice exercised by the concerned doctor would have to be construed as a qualifying parameter. As in the case of Dr. Aniket Mahata (supra), the petitioner qualifies on both counts, and there is no reason disclosed by the State as to why his appointment at the institution of his choice at Hooghly could not be afforded to him, and why he has been posted at a place of the State's choice in Purulia.
22. The concerned clauses of the SOP dated February 16, 2023, 7a, 7b and 7c are clear and unequivocal. If the merit-based criteria is not a qualifying parameter for engagement as argued by the respondent, in that event the choice/preference exercised by the petitioner would have to be the qualifying parameter. It is not as if the petitioner was being transferred from one place to another but, as clearly enshrined in clause 7a, he would

be appointed through further counselling based on merit list already prepared. Thus, even if the respondents arguments are taken to be correct that the merit-based criteria is not a qualifying parameter, then there remains no other parameter on the basis of which posting would be made, other than the choice or preference of the concerned candidate.

23. I am mindful of the limited conspectus of interference by a Court in judicial review, but cannot shut my eyes as a sentinel qui vive. Thus, with extreme care and caution, it is quite clear that the **SOP** enunciated by the State itself, whereby posting would be preceded by counselling based on merit, has been clearly deviated.

24. Thus, the issues of fairness, transparency, and clarity have been compromised in the present case. The acts of commission or omission on the part of the State authority are opaque and warrant interference. The State has been unable to assign any reason as to why the petitioner, despite holding a meritorious rank, was not given the medical institution of his choice and was instead transferred to a different institution at Purulia.

25. In view of the aforestated, I am inclined to hold that the posting of the petitioner at Purulia was unfounded and clearly in violation of the established rules and procedures under the **SOP** for the following reasons:

- a. On a consideration of the SOP, the petitioner was within the merit list to obtain a posting/deployment at Hooghly.
- b. The posting of the petitioner at Purulia is contrary to the SOP and particularly clause 7.
- c. The continued vacancy of a post at the Profulla Chandra Sen Government Medical College and Hospital, Hooghly reflects that there is no other person/doctor above the rank of the petitioner in the merit list who sought an appointment in Hooghly. Thus the petitioner is well entitled to have been posted/deployed at Hooghly.
- d. The deviation in so far as the petitioner is concerned, being one of only two out of 871 candidates in his batch, and one of only three out of 1,649 candidates overall is a clear indication of an arbitrary act which cannot be supported in any manner whatsoever. The petitioner is entitled to be treated at par with all other doctors in so far as their deployment/posting is concerned.

26. In view of the aforestated, I hold that the posting of the petitioner at Purulia is bad in law and hereby set aside memo no. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025 .

27. The respondents are directed to immediately allow the petitioner to join the post of senior resident in the Department of Oto-rhino-laryngology at Profulla Chandra Sen Government Medical College and Hospital, Hooghly, in terms of the original allotment to him during the counselling held on May 3, 2025.
28. The writ petition is accordingly allowed.
29. There shall, however, be no order as to costs.
30. Urgent photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)