Ct. No.4 D/L 28.04.2026
(Naba) 02

F.M.A. 1419 of 2025
With
CAN 1 of 2025

Paschim Banga Samagra Shiksha Mission
Vs.
Sandip Kumar Bardhan & Ors.

Mr. Arjun Ray Mukherjee,
Mr. Joyjeev Medhi
...for the Appellant
Mr. Saibal Acharjee,
Mr. Ambabindu Chakraborty
...for the Respondent/Writ Petitioner
Mr. Biplab Guha,
Ms. Amrita Tewari
...for the State

1. Heard the learned advocate for the appellant/respondent no.2, the learned advocate for the State as well as the learned advocate for the writ petitioner/respondent.

2. A short issue arose for consideration in the present case whether the petitioner's transfer on May 22, 2023, being within a span of four months from the earlier transfer dated 13.01.2023, could be interfered with *ipso facto* on the ground that the transfer took place within a short span. The law regards judicial review in respect of a transfer matter by now has attained finality by various decisions of the Apex Court. It is by now a well settled law that transfer is an instance of service and is best left to the discretion of the authority to effect transfers in

exigencies of service. The scope of interference has been recently stated by the Apex Court in the case of ***Pubi Lombi Vs. State of Arunachal Pradesh & Ors.*** reported in ***(2024) 12 SCC 292***. The law is clear that an order of transfer is vulnerable to interference in judicial review on grounds of proved *mala fide* and being contrary to the statute/ Rule.

3. The Hon'ble Single Judge, however, has interfered with the transfer by holding that it was arbitrary and in colourable exercise of power. The findings of the Hon'ble Single Judge in paragraph 18 of the order under appeal reads:

> *"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****, annexture-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."*

4. The learned advocate for the appellant, therefore, submits that the findings are not within the

contours of judicial review governing the transfer of a Government employee.

5. The learned advocate for the writ petitioner submits that the petitioner is a contractual employee. He is a Field Junior Engineer, who is assigned the task of maintaining the civil works and infrastructure of the schools under the Sarba Sikha Mission.

6. Firstly, the authorities failed to consider a fact that initially in 2010, he was posted in the area of erstwhile Bardhaman District, which after bifurcation in April, 2017, falls in Pubra Bardhaman. Thereafter, petitioner's posting at distant places in Paschim Bardhaman caused severe inconvenience.

7. A second ground was urged that there was no provision for transfer of such contractual employees.

8. We are not inclined to accept the second ground for the simple reason that admittedly the petitioner's earlier transfer order dated 13.01.2023, was issued on his request/representation. The same was by an authority who had no jurisdiction to issue such transfer order. Therefore, it was revoked by the impugned order dated 22.05.2023. The present case is confined only to the order dated

22.05.2023, which is not a transfer order, but an order of revocation/rectification of the earlier transfer order dated 13.01.2023 which was without jurisdiction, since it was issued by an authority, namely, the Additional District Magistrate, Education, Purba Bardhaman, who had no jurisdiction to transfer the petitioner, a Field Junior Engineer posted in another District (Paschim Bardhaman).

9. In so far as the first ground is concerned, learned advocate for the writ petitioner submits that the petitioner was initially appointed on a contractual basis in the field area, which after bifurcation of the District falls in Purba Bardhaman. His current posting at Paschim Bardhaman is at a great distance from his home and therefore, he is facing extreme difficulty since he has to take care of his parents and children.

10. The writ petitioner did not show with reference to any material on record that the order dated 22.05.2023 revoking the earlier transfer order dated 13.01.2023, was in contravention of any statutory provision. The writ petitioner also did not make out a case of the order dated 22.05.2023 being vitiated on any proved ground of mala fide. We are, therefore, unable to affirm

the findings of the learned Single Judge in paragraph 18 of the judgment under appeal, extracted above.

11. For the reasons discussed above, the order of the learned Single Judge dated 10th July, 2025, in our opinion is unsustainable. The same is set aside.

12. Considering the nature of petitioner's service (contractual), we leave it open to the petitioner to approach the appellant/respondent no.2 with the claimed mitigating circumstances as recorded above, by way of a representation. If such a representation is filed, it is needless to say that the appellant may consider the same having regard to all other relevant factors.

13. It is admitted that the petitioner is now working at the erstwhile place of posting prior to issuance of the transfer order dated 13.01.2023.

14. We, therefore, are of the view that if the petitioner makes a representation within two weeks before the appellant, the appellant shall consider the same within a period of four (04) weeks thereafter by an order, under due intimation to the petitioner.

15. We make it clear that we have not expressed any opinion in respect of the proposed representation.

16. Pending applications stand disposed of.

17. The appeal is allowed.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)