

04.03.2025
Court No.23
ML/Item No.-22
[Milan, A.R. (Ct.)]

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 28623 of 2024

Biswanath Chakraborty & Ors.
versus
The State of West Bengal & Ors.

Mr. Debdutta Basu

....for the Petitioners

Mr. Amit Gupta, Sr. Adv.,
Mr. Biman Halder,

....for the State

Mr. Sujit Sankar Koley

....for DPL

Affidavit of service filed in Court today is taken on record.

The petitioners being five in number, were engaged till December, 2022 at the Power Plant Department of Durgapur Projects Limited (in short, "DPL"). The petitioners say that in view of the classification contained in the Durgapur Projects Limited (Conditions of Service & Conduct) Rules (hereinafter referred to as, "DPL Rules") and in particular Rule 6 thereof, the petitioners are plant employees that is those who are directly connected with work in any of the factories. The petitioners say that there is a different cadre called other employees being those who are not directly connected with the work in any of the factories.

The petitioners further refer to the Standing Order of DPL and in particular Clause 10 of DPL Rules which speaks off transfer. The petitioners also refer to their appointment letters to demonstrate that they can be transferred to any other department under the company. The petitioners say that all on a sudden, on 27th December, 2022, the petitioners were served with a transfer order by which they were directed to join the office of the District Controller, Food & Supplies, Birbhum, Khadya Bhaban Department on deputation. The petitioners have challenged the said order of transfer and/or deputation by citing the Rules, Standing Order and the terms and conditions as stipulated in the appointment letter. The learned advocate for petitioners has cited a judgment reported in **2001 (5) SCC 508 [State Bank of India vs. Anjan Sanyal & Ors.]**, to contend that the transfer order is contrary to the Service Rules and, as such, should be interfered with.

On behalf of DPL and the State, it is submitted that the petitioners, by filing a writ petition on 29th November, 2024, have challenged the order of transfer by way of deputation dated 27th December, 2022. A belated challenge should not be entertained particularly when the petitioners have joined at their new position.

The petitioners, however, dispute the submission of DPL that the petitioners have joined at transferred place and, as such, is entitled to maintain this writ

petition because of the fact that the petitioners joined at the transferred place under protest.

It is further submitted by DPL and the State that this transfer order on deputation was necessitated as the Coke Oven Unit of DPL was closed down in 2015 along with few other power plants and, as such, the services of the petitioners cannot be gainfully utilized in DPL. Since, DPL is controlled by the Government of West Bengal, the said Government, as a policy matter, has taken a decision to depute the employees of DPL to other departments under the State. The decision has been approved by the Cabinet and, as such, the scope of challenging the same is very limited.

It is further submitted by DPL that the petitioners will be receiving their salary and emoluments from DPL, even though they are working on deputation.

In reply, it is submitted by the petitioners that their future prospect on being transferred by way of deputation will be jeopardized. If they intend to seek an alternative job in the market, they will not be in a position to explain as to what was their nature of employment on deputation. The petitioners will also be deprived of channel of promotion, once they are transferred on deputation outside DPL. Moreover, at least two power plants are operational and technical persons like the petitioners are engaged thereat.

It is a settled position of law that in case of transfer beyond the cadre as it appears in the instant case, the consent of the employee concerned is necessary as held in the judgment reported in **2013 (3) SCC 526 [Kavi Raj & Ors. Vs. State of Jammu and Kashmir & ors.]**. Whether the scheme to which DPL is referring to, was promulgated at the consent of the employees or with an embedded consent therein is, therefor, required to look into.

In the aforesaid facts and circumstances, I direct DPL and the State to file separate report in the form of an affidavit dealing with the principal grievances of the petitioners, stating the relevant facts and disclosing necessary documents which are required to adjudication of the issues raised.

The report should also contain a copy of the scheme, if any, on the basis whereof, it is asserted by DPL and the State respondent that the petitioners were transferred on deputation.

Let such report in the form of an affidavit be filed by 28th March, 2025. Exception thereto, if any, be filed by 21st April, 2025.

Let this matter appear in the “Combined Monthly List” of May, 2025.

(Arindam Mukherjee, J.)