

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 28623 of 2024

Biswanath Chakraborty & Ors.

-Versus-

The State of West Bengal & Ors.

With

W.P.A. No. 28619 of 2024

Soumen Das & Anr.

-Versus-

The State of West Bengal & Ors.

With

W.P.A. No. 28636 of 2024

Ashis Mondal

-Versus-

The State of West Bengal & Ors.

Mr. Sudipta Dasgupta

Mr. Baibhav Roy

....For the petitioners.

Mr. Amit Gupta, Sr. Adv.

Mr. Biman Halder

Ms. Bineeta Bhattacharya

Mr. Shibasish Banerjee

....For the State.

Mr. Soumya Roy Chowdhury

Mr. Sujit Sankar Koley

....For the DPL.

Hearing Concluded On : 21.04.2026

Judgment on : 30.04.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petitions challenging the order No. DPL/GM (HR&A) 2022/471 dated 27th December, 2022, order No. DPL/GM (HR&A) 2023/13 dated 10th January, 2023 and order No. DPL/GM (HR&A) 2023/17 dated 10th January, 2023 with regard to their posting on deputation to the office of the District Controller – Food and Supplies, Purba Bardhaman, Khadya Bhavan, Bardhaman, West Bengal from Durgapur Projects Limited (hereinafter referred to as “DPL”), Durgapur.
2. The issue raised by the petitioners in their respective Writ Petitions that as per the Standing Orders of the Durgapur Projects Limited, the Workman of the DPL may be transferred from one department to another department of the Company but there is no provision of

transfer or to posted on deputation from one organization to another organization of the Government.

- 3.** The petitioners were appointed either by way of compassionate ground or by way of direct recruitment in different Class IV (Tech) posts at Durgapur Projects Limited in different dates since 1994 to 2012.
- 4.** By an order dated 27th December, 2022, as per the decision of the State Level Committee on Rationalization and Optimal Utilization of Human Resources, 102 employees including the petitioners herein posted at Durgapur Projects Limited, Durgapur, were placed on deputation to the Office of the District Controller - Food and Supplies, Purba Bardhaman, Khadya Bhavan.
- 5.** The contentions of the petitioners are that the service conditions of the petitioners are governed by the Standing Orders of the Durgapur Projects Limited and as per Clause 10 of the Standing Orders, the workman cannot be transferred on deputation from Durgapur Projects Limited to other Department of Government of West Bengal but in the present case, the petitioners have been posted in deputation in the Office of the District Controller - Food and Supplies, Purba Bardhaman, Khadya Bhavan from Durgapur Projects Limited.
- 6.** The respondent nos. 2 to 5 first raised an objection with regard to the maintainability of the writ petitions on the ground that the impugned orders were passed on 27th December, 2022 and 10th January, 2023 respectively and in terms of the orders, the petitioners have joined their

duties in the office of the District Controller- Food and Supplies, Purba Bardhaman without any protest or objection and after two years of joining, the petitioners have filed the present writ petitions. In support of his submission, he has relied upon the judgment in the case of **Kavi Raj and Others Vs. State of Jammu and Kashmir & Ors.** reported in **(2013) 3 SCC 526** and submits that consent of posting (or transfer) beyond the cadre (or parent department) is inferable from the conduct of the employee, who does not protest or contest such posting or transfer.

7. Mr. Soumya Roy Chowdhury, Learned Advocate representing the Durgapur Projects Limited submits that the petitioners have suppressed the fact that after issuance of the impugned order, the petitioners have without any protest reported their duty at their new place of posting and are drawing their salary continuously. He submits that the petitioners have not come before this Court with clean hand. He has relied upon the judgment in the case of **Auroville Foundation Vs. Natasha Storey** reported in **2025 SCC OnLine SC 556**.
8. Mr. Roy Chowdhury submits that altogether 332 employees have been posted on deputation but only the petitioners have challenged the impugned order after two years, even after joining the duties without any protest only with the intention to frustrate the entire scheme of the Company.

- 9.** Mr. Roy Chowdhury submits that the Company has been running through financial crisis for the last few decades. Presently in a moribund condition and there is no work in the Company and there is no scope for further development of the Company. The Company is not in a position to bear further burden of the employees. He submits that the Coke Oven Group of Plants under the Durgapur Projects Limited was closed in the year 2015 due to the lack of orders and business on account of severe recession in the industries wherein it used to supply its products along with major environmental pollution issues and became inoperative since July, 2015. The other three power plants were also closed as a result of excess manpower become a huge financial burden of the Company.
- 10.** Mr. Roy Chowdhury submits that due to such excess manpower (employees) of the Durgapur Projects Limited, the Board of Directors approved a policy of deployment its employees on different government organization on deputation keeping in view of the manpower study, the total sanctioned manpower is 892 whereas at the material point of deployment on deputation the total manpower/ employees were 1594, which excludes the employees already placed in deemed to be in deputation under WBSEDCL/WBSETCL.
- 11.** Mr. Roy Chowdhury submits that considering the financial unbearable burden of the Company, the excess 332 employees of the DPL were redeployed to the offices of the Government of West Bengal in terms of the order of the Additional Chief Secretary, Government of West Bengal,

Department of Power dated 22nd December, 2022, following the resolution of the Government of West Bengal, Finance Department, Audit Branch dated 17th June, 2014, as well as the Notification dated 26th December, 2018 of the Government of West Bengal, Department of Power and Non-Conventional Energy Resources.

12. As per decision of the State Level Committee of Rationalization and Optimal Utilization of Human Resources, under the Finance Department, Government of West Bengal and subsequent order issued by the Power Department, 102 employees posted at Durgapur Projects Limited have been placed on deputation to the Office of the District Controller - Food and Supplies, Purba Bardhaman Khadya Bhavan.
13. The issue raised by the petitioners in their respective petitions that as per Standing Orders, the Workman may be transferred from one department to another department of the Company but there is no provision of transfer or deputation to other organization.
14. Clause 10 of the Standing Orders reads as follows:

“10. Transfer

A workman may be transferred from one shift to another, or from one section to another, or from one department to another, or from one job to another, or from one place of work to another, or from one establishment to another of the Company.

In the event of such transfer, the Workman’s total emoluments or his basic conditions of service will not be adversely affected. The workman will be subjected to all other terms and conditions of service as are applicable to the place/ section/

*department/ job/ shift/ Division/ Unit/
Establishment of which he is transferred.”*

- 15.** The impugned orders dated 27th December, 2022 and 10th January, 2023, contains the following terms and conditions:

“1. They will retain their pay in their existing capacity in the scale they are currently enjoying in DPL with deputation allowance, if applicable as per rules of DPL.

2. During the deputation period, they shall be guided by the rules of DPL as well as rules of borrowing authority.

3. They may be entitled for promotion if otherwise eligible during deputation service as per rules.

4. They will continue to enjoy the medical facilities from DPL while on deputation.

5. Salary will be paid by DPL on the basis of Attendance certified by Department where the employees have been deputed and demand will be placed by MD, DPL for disbursement of the amount to DPL on monthly basis as per the guidelines of the order from the Power Dept., Govt of West Bengal.

6. They shall be covered under CPF regulation as per rules applicable to them.”

- 16.** The Durgapur Projects Limited with the consultation of the Government of State of West Bengal has taken a decision to place 332 employees of DPL on deputation on the ground that due to the closure of Coke Oven Group of Plants under DPL was closed in the year 2015 due to lack of orders and business on account of severe recession in the industries where it used to supply its products. Due to which considerable number of employees of DPL became surplus and idle. The other three

power plants were also closed as a result of excess manpower became a huge financial burden of the Company.

- 17.** To the utilization of the excessive manpower/employees, the Durgapur Projects Limited took up the matter with the Government of West Bengal and the State Level Committee of Rationalization and Optimal Utilization of Human Resources under the Finance Department had agreed to the proposal of DPL of deployment of surplus manpower in DPL in other State Government and the same was approved by the State Cabinet.
- 18.** The orders of deputation were passed on 27th December, 2022 and 10th January, 2023. The petitioners have accepted the same and have reported their duty in terms of the orders dated 27th December, 2022 and 10th January, 2023 without any protest or objection. After reporting their duty and after about two years that is in the month of October, 2024, the petitioners have made their representation. In the case of **Kavi Raj & Ors. (supra)**, the Hon'ble Supreme Court held that:

“24. Before concluding, it is essential to deal with certain inferences drawn by the learned Single Judge of the High Court. According to the learned Single Judge, prior consent of an employee is imperative, binding, peremptory and mandatory, before he is posted on deputation outside his parent department. No statutory rule has been brought to our notice, requiring prior consent of an employee, before his deployment against a post beyond his parent cadre. The mere fact that the appellants' consent was not sought before their posting at Government Medical College, Jammu (and/or at the hospitals associated therewith) would not, in our view have any determinative

effect on the present controversy. Broadly, an employee can only be posted (or transferred) to a post against which he is selected. This would ensure his stationing, within the cadre of posts, under his principal employer. His posting may, however, be regulated differently, by statutory rules, governing his conditions of service. In the absence of any such rules, an employee cannot be posted (or transferred) beyond the cadre to which he is selected, without his willingness/readiness. Therefore, an employee's posting (or transfer), to a department other than the one to which he is appointed, against his will, would be impermissible. But willingness of posting beyond the cadre (and/or parent department) need not be expressly sought. It can be implied. It need not be in the nature of a written consent. Consent of posting (or transfer) beyond the cadre (or parent department) is inferable from the conduct of the employee, who does not protest or contest such posting/transfer. In the present controversy, the appellants were issued posting orders by the Principal, Government Medical College, Jammu, dated 30-12-1997. They accepted the same, and assumed charge as Senior/Junior House Officers at Government Medical College, Jammu, despite their selection and appointment as Assistant Surgeons. Even now they wish to continue to serve against posts in the Directorate of Medical Education. There cannot be any doubt about their willingness/readiness to serve with the borrowing Directorate. The consent of the appellants is tacit and unquestionable. We are therefore of the view that the learned Single Judge of the High Court clearly erred on the instant aspect of the matter.”

- 19.** Standing Orders relied by the petitioners provides that a workman may be transferred from one shift to another shift, or from one section to another section, or one department to another, or one job to another, or from one place of work to another, or from one establishment to another of the Company. But it is also provided that in the event of

such transfer, the workman's total emoluments or his basic conditions of service will not be adversely affected.

- 20.** The impugned orders by which the petitioners have been placed on deputation clarified that they will retain their pay in their existing capacity with deputation allowance, they will be guided with rules of the DPL as well as rules of the borrowing authority, they may be entitled for promotion if otherwise eligible during deputation and they will get all the benefits which they are getting in the DPL.
- 21.** The Standing Orders do not say that the workman cannot be placed on deputation. The respondents have taken decision to place the petitioners on deputation in the Department of Government of West Bengal due to the circumstances mentioned in paragraphs 16 and 17 above and for the benefit of the petitioner.
- 22.** Considering the above, this Court did not find any merit in the writ petitions filed by the petitioners. Accordingly, **WPA No. 28623 of 2024**, **WPA No. 28619 of 2024** and **WPA No. 28636 of 2024** are **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)