

18.01.2023
Item No. 10.
Court No.6.
S. De

**M.A.T. 67 of 2023
with
I.A. No. CAN/1/2023**

**Bratati Chatterjee.
Vs
The State of West Bengal & Ors.**

Mr. Bhaskar Roy,
...for the appellant/writ petitioner.

Mr. Ansar Mondal,
Mr. Suprabhat Bhattacharyya,
...for the State.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated January 11, 2023, whereby the appellant's writ petition being WPA 428 of 2023 was disposed of, is under challenge in this appeal.

The appellant had approached the learned Single Judge with a case that she had been sexually harassed while serving as a Gram Rojgar Sevak in Egara Gram Panchayat, District-Paschim Burdwan. Apparently, she had suffered sexual harassment in the hands of the respondent no.6, who had joined the post of Executive Assistant in January 4, 2022, on transfer from Kajora Gram Panchayat. Soon thereafter the

petitioner was transferred to Amrasota Gram Panchayat in the same capacity.

The appellant/writ petitioner challenged the transfer order and also prayed for a direction on the authorities to consider her complaint against the respondent no.6.

The learned Judge rejected the challenge to the transfer order on two grounds. Firstly, the learned Judge observed that under the Sexual Harassment at Work Place (Prevention, Prohibition and Redressal) Act, 2013, as an interim measure the concerned authority can transfer the complainant and remove her from unhealthy environment in which she had been allegedly harassed. Secondly, the transfer was for administrative reasons. Transfer is an incidence of service.

As regards the other prayer of the appellant, the learned Judge granted liberty to the appellant/writ petitioner to approach the Block Development Officer, Raniganj Development Block for constitution of an Internal Complaints Committee as per law, for adjudication of the issue of sexual harassment in accordance with the provisions of the 2013 Act. The learned Judge further directed that if such approach is made, the Committee will be constituted and the consequential steps will follow as per law. The learned

Judge directed the appellant to join the transfer post within January 17, 2023.

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned counsel for the parties. We see no apparent infirmity in the order under appeal. Indeed, an employee can be transferred for administrative exigency. Transfer is no doubt an incidence of service. No employee has any vested right to continue to work at any one place. Further, for the protection of a lady employee who alleges sexual harassment, transfer may also be effected. We do not interfere with the learned Judge's decision on the issue of transfer.

However, learned advocate for the appellant says that the appellant has been transferred to a place which is eight kilometers from her residence. This will cause undue hardship to her. There are posts available much nearer to her residence. The authorities should consider posting her at some place which is near her residence.

We grant liberty to the appellant to make a representation to the concerned Sub-Divisional Officer with a prayer for being posted at a nearby place. If such a representation is made within a week from date, the same shall be disposed of by the Sub-Divisional Officer in accordance with law by passing a

reasoned order, after giving an opportunity of hearing to the appellant or her authorized representative, within a fortnight from the date of receipt of the representation. While we do not tie the hands of the Sub-Divisional Officer, we are sure the officer shall consider the representation sympathetically.

In so far as the other limb of the order under appeal is concerned, we modify the order to the extent that instead of approaching the Block Development Officer, the appellant will be at liberty to approach the District Magistrate being the respondent no.5 herein for taking appropriate steps in accordance with the 2013 Act.

We see from the order under appeal that the appellant was directed to join the new workplace by January 17, 2023, i.e. yesterday. We extend such time till January 20, 2023.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

M.A.T. 67 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)