

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 24275 of 2015

With
CAN 1 of 2022

Dr. Prakriti Chaudhuri
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Sumit Roy
Mr. Rudra Jyoti Bhattacharya
Mr. Ashok Kumar Jha
Ms. Moumita Mandal

For the respondents : Mr. Tapas Kumar Mandal

Heard on : 29th November, 2023

Judgment on : **29th November, 2023**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 26th August, 2015, whereby the petitioner's service from the post of Medical Officer (School Health), North 24 Parganas, was terminated in terms of a report prepared by the Central Medical Board regarding her health.
2. The petitioner is a homeopathic doctor. Vide letter dated 28th December, 2012 the respondent no.4 had engaged the petitioner as

Medical Officer (School Health) on contract basis for a period of one year on a consolidated remuneration of Rs.25,000/- per month.

3. Subsequently, by an office order dated 22nd September, 2014, on the basis of a representation made by the petitioner she was withdrawn from the District of Malda and was posted in the District of North 24 Parganas, with a direction to join the post within fifteen days from the date of the order. The petitioner had since, reported to the post under the Chief Medical Officer of Health, North 24 Parganas. Later by an office order dated 11th November, 2014, the petitioner was posted at Barasat-I.
4. Records reveal that subsequent to the aforesaid transfer order being given effect to, the petitioner had made a representation to the Chief Medical Officer on 1st December, 2014, complaining that her present posting requires her to travel almost 8 kilometers everyday and as a result whereof, she has been suffering immensely. She had also cited spine injury as a reason for the respondents to permit the petitioner to work from an alternative place of posting.
5. Since, the aforesaid representation was not adhered to, a further representation was made by the petitioner on 5th February, 2015, enclosing therewith her medical reports. On the basis of the representations made by the petitioner, the matter was taken up by the Chief Medical Officer of Health, North 24 Parganas and by a communication in writing dated 11th May, 2015, the State Family Welfare Officer, Department of Health & Family Welfare was

requested to look into the matter. Records also reveal that the Zonal Leprosy Officer and the D. M. CHO & In-Charge Dy C.M.O.H.-III, North 24 Parganas, taking into consideration the medical reports of the petitioner had recommended the transfer and posting of the petitioner to South Dum Dum Municipality.

6. It appears that on the basis of the representations made by the petitioner, the Deputy Director of Health Services by an office order dated 4th June, 2015 had ordered constitution of a medical board, for assessment of the physical fitness of the petitioner, to continue in Government service.
7. Pursuant to the aforesaid, the Medical Superintendent-cum-Vice-Principal, Medical College and Hospital, Kolkata, by an office order dated 9th June, 2015 constituted a medical board comprising of the following members:-

<i>Sl.No.</i>	<i>Name of Doctors</i>	<i>Designation & Department</i>
1.	<i>Dr. A. K. Banerjee</i>	<i>Prof. Dept. of General Medicine, M.C.H, Kolkata</i>
2	<i>Dr. Debasis Basu</i>	<i>Prof. Dept. of Neuro-Medicine, M.C.H., Kolkata</i>
3	<i>Dr. B.K. Chowdhury</i>	<i>Prof. Dept. of Physical Medicine, M.C.H., Kolkata</i>

8. The said medical board, after examining the petitioner found her fit for further service of less labourious character than that which she had been doing. She was, however, advised to avoid strenuous and jerky journey over irregular road, in rickshaw.

9. Unfortunately, for the petitioner, it is on the basis of the aforesaid report that the Executive Director of the West Bengal State Health and Family Welfare Samity by an office order dated 26th August, 2015 informed the petitioner that the competent authority is of the opinion that it is not possible for the petitioner to carry out the scheduled duties assigned for the post and accordingly, the petitioner was given a month's notice effective from the date of issuance of the order for termination of the petitioner's service from the post of Medical Officer (School Health), North 24 Parganas.
10. Being aggrieved, the present writ petition has been filed. The respondents are contesting the writ petition and have filed their affidavit-in-opposition.
11. Mr. Roy, learned advocate representing the petitioner by drawing attention of this Court to the report of the medical board at page 67 of the writ petition submits that the medical board did not find the petitioner unfit for the Government job. Although, the order impugned refers to the formation of opinion of the competent authority on the basis of the report, the medical report do not disclose that the medical board had found the petitioner unfit for carrying out the duties assigned for her post. The order is arbitrary to say the least. The petitioner's services have been taken away by a stroke of a pen, without even affording the petitioner an opportunity of hearing. This order according to Mr. Roy is not sustainable. He

prays that this Court may set aside the aforesaid order and direct the authorities to reinstate the petitioner in service.

12. *Per contra*, Mr. Mondal, learned advocate representing the respondents by placing reliance on the affidavit-in-opposition filed on behalf of the respondents submits that there is no irregularity on the part of the respondents in terminating the service of the petitioner. By referring to paragraph 2 sub-paragraphs (b) and (e) of the affidavit in opposition, he submits that on the basis of the medical report the decision to terminate the service of the petitioner had been taken. The sphere of activities under Rashtriya Bal Swasthya Karyakram (RBSK) Scheme and the duty of Medical Officer under the Scheme has been duly explained in the said affidavit. The same, *inter alia*, involves attending Anganwadi Centres as also engagement of Mobile Health Teams at Block Level consisting of Ayush Doctor, Auxiliary Nurse Midwifery and Pharmacist. Considering the medical report and the journey involved in the duty of Medical Officer (School Health) under RBSK Scheme, the Director of Health Services had opined that the petitioner may not be suitable for the post of Medical Officer (School Health) under RBSK Scheme and consequentially, issued a notice of termination. He, however, candidly submits that the formation of opinion of the Director was solely based on the aforesaid medical report and no other document was considered by the Director of Health Services. In the given facts, he submits that no case for

interference has been made out by the petitioner and the writ petition should be dismissed.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is noticed that the petitioner is a qualified homeopathic doctor. Although, the petitioner was originally engaged on contractual basis for a period of one year, it appears that the respondents have permitted the petitioner to continue in service and had from time to time by issuing office orders had posted her at different places. It appears that on the basis of the representations made by the petitioner *qua* her claim for change of her place of posting on medical ground that a medical board was constituted. The petitioner was examined by the medical board and on the basis of the report of the medical examination, the petitioner was found to be medically fit for further service of less labourious character than that which she had been doing. Although, in the affidavit-in-opposition it has been stated in paragraph 2(b) that the Director of Health while examining the report had noted that the petitioner may not be fit for scheduled duty and despite the affidavit stating that the statement made in paragraph 2 to be based on the information derived from the records, no such records have been produced. It further appears that in the said affidavit although, it has been stated that the Director of Health Services had opined that the petitioner may not be suitable

for the post of Medical Officer (School Health), no such opinion has also been produced.

14. It must be noted here that the advocate representing the respondents has candidly stated that apart from the report of the Medical Board there is no other report. Taking into consideration the materials on record and the submissions of the learned advocate representing the respondents, it would be apparent and clear that the basis for formation of such opinion by the Director of Health Services was the report prepared by the medical board on 26th June, 2015. No other document was considered by the Director for forming his aforesaid opinion. In my view, when the report dated 26th June, 2015 did not find the petitioner unfit for medical services, and on the contrary found her fit for further service of less laborious character and further taking into consideration that at the relevant point of time the petitioner was only 32 years old, there was no reason to infer any condition especially when the same is not reflected in the report, for the competent authority of the respondents to conclude that it was no longer possible for the petitioner to carry out the scheduled duties assigned to the post. Admittedly, no opportunity had also been given to the petitioner to explain her position prior to issuing the order of termination. Considering the nature of job that the petitioner was performing and the medical report, it is rather astonishing to note that the competent authority on the basis of the report had purported to terminate the service of

the petitioner without even affording any opportunity of hearing. The decision to terminate the petitioner appears to have been taken in hot haste at the stroke of a pen. The same is arbitrary to say the least. The aforesaid action clearly offends Article 14 of the Constitution of India.

15. Having regard to the aforesaid and as the formation of opinion of the Director that the petitioner may not be suitable for the post appears to be contrary to the report prepared by the medical board and since, no reasons have been disclosed as to why the aforesaid opinion had been formed by the Director, I am of the view, that the order dated 26th August, 2015, cannot be sustained and the same is accordingly set aside and quashed.
16. The respondents are directed to reinstate the petitioner in service within a period of six weeks from the date of communication of this order.
17. It shall, however, be open to the respondents to post the petitioner as the exigency of the service demands, subject to her medical condition.
18. The petitioner shall be treated to be in continuous service notionally, though, no actual monetary benefit therefor, may be disbursed in her favour.
19. With the above observations/directions, the writ petition is disposed of.

20. In the light of the aforesaid, the connected application being CAN 1 of 2022, *inter alia*, praying for expeditious disposal of the writ petition, having become infructuous, is accordingly disposed of.
21. There shall, however, be no order as to costs.
22. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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