

03
20.06.2024
S.D.
Ct. No. 26

**M.A.T. 362 of 2024
With
CAN 1 of 2024**

**Jharna Dey
Vs.
The State of West Bengal & Ors.**

Mr. Atis Kumar Biswas
Ms. Jyoti Agarwal
....For the Appellant/petitioner

Mr. Saurav Chaudhuri
Ms. Sukla Das Chandra
..for the State

Appeal is at the behest of the writ petitioner and is directed against the order dated November 24, 2023 rejecting her writ petition.

Appellant approached the writ Court being aggrieved by an order of transfer and relocation of her service from one place to the other.

Learned advocate appearing for the appellant submits that, the order of transfer was passed *mala fide*, for extraneous consideration and as a measure of punishment

without any opportunity to defend her position being granted.

Learned advocate appearing for the State submits a report as called for by the order dated April 9, 2024 which be taken on record.

The Coordinate Bench on April 9, 2024 formed a *prima facie* view that the impugned order of the transfer of the appellant was punitive as a show-cause notice was issued on June 22, 2022 and no further steps were taken pursuant to such show-cause notice although the appellant was transferred in the meantime. The Coordinate Bench, therefore, called for a report which is filed today and is taken on record, as noted above.

We perused the report so submitted in terms of the order dated April 9, 2020.

In such report, we find that a show-cause notice dated June 22, 2022 was issued to the appellant referring to a visit by the Child Development Project Officer. The report also contains a memo dated June 22, 2022 requiring another person to perform the duties of the appellant at the subject place.

The report also contains a writing dated June 23, 2022 issued by the District Programme Officer (ICDS)

which is an enquiry report regarding the visit of Tehatta Daspara AWC No. 37 being subject AWC. Such enquiry report does not find any fault of the appellant with regard to the allegation of a lizard being found in the distributed meal. Report states that after visiting the spot and after hearing of the versions from the local residents as well as the appellant, it could not be ascertained that the lizard fell into the pot at the time of cooking or at the house of the beneficiary. The enquiry report also noted that no person at the house of the beneficiary who consumed the meal were adversely effected.

Surprisingly, there is a writing dated June 24, 2022 emanating from the Sub-Divisional Officer, Tehatta to the Additional District Magistrate enclosing an undated report of the Deputy Magistrate and Deputy Collector, Tehatta. The undated enquiry report claims that there was gross negligence on the part of the appellant in cooking food in unhealthy condition and not testing the food prior to serving it to the children. The report also speaks of rude behavior of the appellant.

This adverse noting in the undated report is conspicuously absent in the enquiry report dated June 23, 2022. Undated report does not refer to the report dated

June 23, 2022. No material is disclosed before the Court as to why the authorities revisited the issue after the report dated June 23, 2022 without serving any further show-cause notice on the appellant. The only show-cause notice issued to the appellant is dated June 22, 2022 and the enquiry report is dated June 23, 2022.

There is substance in the condition of the appellant that the appellant was being dealt with for extraneous consideration. The report dated June 23, 2022 does not contain any material adverse to the appellant in respect of the alleged incident or otherwise. No reason is ascribed as to why the authorities embarked on a fresh enquiry in respect of the same incident and prepared an adverse report by a different authority without alluding to the first report and without issuing any further show-cause notice to the appellant.

In such circumstances, we are of the view that the impugned order of transfer was issued for extraneous considerations and is, therefore, vitiated. We, therefore, quash the same.

In view of the discussions above, the appeal succeeds. Impugned order is set aside. The impugned Memo dated August 8, 2023 is quashed.

It is clarified that the appellant will be permitted to join her duties at her original posting as if the order of transfer dated August 8, 2023 was not issued.

M.A.T. 362 of 2024 and the connected application being **CAN 1 of 2024** are disposed of without any order as to costs.

(Debangsu Basak, J.)

(Partha Sarathi Sen, J.)