

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

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 19949 of 2023

Sharmistha Roychowdhury

Vs.

The State of West Bengal & Ors.

Mr. Debajyoti Basu, Sr. Adv.

Mr. Souradeep Dutta

Mr. Himadree Ghosh

Mr. Sankar Ranjan Sen

....For the petitioner.

Mr. Manoj Malhotra

Mr. Arkadipta Sengupta

Mr. Tirthankar Dey

... For the respondent no.6.

Ms. Sarmila Das

.... For the respondent no.7.

Mr. K. J. Yusuf, Ld. AGP

Ms. Rupsha Chakraborty

... For the State.

Hearing Concluded On : 01.12.2025

Judgment on : 19.12.2025

Krishna Rao, J.:

1. The petitioner has filed the present writ application challenging the impugned letter dated 31st July, 2023, issued by the Reserve Officer, Detective Department, Kolkata wherein the petitioner is directed to report her concern authority from the Detective Department, Kolkata with immediate effect and also informed her that the supporting staffs of her office of Detective Department are returned and report to Reserve Office, Detective Department immediately.
2. Pursuant to the Scheme for setting up of Family Counselling Centre in Police Departments in all State Capitals/ Union Territories, the Department of Social Welfare, Women and Children has set up two Family Counselling Centre at Lalbazar and 34, Park Street to deal with the cases of family disputes and domestic violence and the same was published in the Kolkata Police Gazette dated 17th April, 2014.
3. The petitioner having qualification for the post of Counsellor, has applied for the said post and appeared before the Recruitment Sub-Committee of the Board on 27th May, 1995 and the petitioner was appointed as Counsellor on temporary basis by a letter dated 31st May, 1995 at Family Counselling Centre at Police Head Quarter under the administrative control of West Bengal Social Welfare Advisory Board.

4. Mr. Debajyoti Basu, Learned Senior Advocate representing the petitioner submits that since her appointment, the petitioner is rendering her service as Counsellor. By a letter dated 13th July, 2023, the Director of the Central Social Welfare Board informed that a policy decision has been taken by the Ministry that the Family Counselling Centre are to be kept operational with support from One Stop Centre (OSC) Scheme from the year 2023-2024.
5. Mr. Basu submits that in the mean time in the year 2018, the Family Counselling Centre along with other police departments was shifted to Kolkata Improvement Trust Building. He submits that as the petitioner was working with efficiency, effectiveness and honesty, accordingly, the erstwhile Deputy Commissioner of Police had awarded with certificate of appreciation to the petitioner.
6. Mr. Basu submits that all of a sudden on 31st July, 2023, the petitioner received a letter from the Reserve Officer of the Detective Department directing the petitioner to report her duty to the concern authority from Detective Department and also informed the petitioner that the supporting staffs of her office of Detective Department is returned and report to Reserve Office immediately. He submits that the State Board is the Appointing Authority and the Reserve Officer is not competent to issue such notice. On 7th August, 2023, all the supporting staffs of the petitioner have been withdrawn.

7. During pendency of the present writ application, the Secretary, Forum for Social Action has issued a letter to the petitioner on 19th August, 2023 wherein a copy of the letter dated 14th August, 2023, issued by the Joint Secretary to the Government of West Bengal, Department of WCD & SW & Officer-in-charge, W.B. Social Welfare Board was forwarded to the petitioner and directed the petitioner to submit her resignation. He submits that in the letter dated 14th August, 2023, several allegations have been levelled against the petitioner. On receipt of the said letter, the petitioner has submitted detailed reply to the concern authority denying the allegations levelled against the petitioner.

8. Mr. Basu submits that the respondents have made serious allegations against the petitioner but no opportunity of hearing was provided to the petitioner. He submits that the alleged enquiry conducted by the police authority is without any authority, as the police authority is not the appointing authority of the petitioner. In support of his submissions, he has relied upon the following judgments:

i. Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi & Ors. reported in (1978) 1 SCC 405.

ii. Maneka Gandhi vs. Union of India & Anr. reported in (1978) 1 SCC 248.

iii. Yogesh M. Vyas vs. Registrar, High Court of Gujarat reported in (2020) 18 SCC 324.

iv. Vashist Narayan Kumar vs. State of Bihar & Ors. reported in (2024) 11 SCC 785.

v. A.P. State Federation of Coop. Spinning Mills Ltd. & Anr. vs. P.V. Swaminathan reported in (2001) 10 SCC 83.

vi. Chairman, All India Railway Recruitment Board and Anr. vs. K. Shyam Kumar & Ors. reported in (2010) 6 SCC 614.

9. Mr. K.J. Yusuf, Learned AGP, representing the respondent nos. 1 to 5 submits that several complaints from different individuals were being received by the Department against the petitioner on the allegation that the petitioner is harassing them and threatening to withdraw the case registered at Police Station or before the Learned Court and also demanding money as bribe to settle the matter. He submits that after enquiry on certain complaints of the petitioner, it reveals that on receipt of complaint of the aggrieved persons, those complaints were not endorsed to any of her Senior Officers of Kolkata Police. The petitioner used to send notices to the aggrieved parties and the opposite parties according to her whims. He further submits that the petitioner used a rubber stamp having impression of “*Counselor-in-Charge, Family Counseling Section, Detective Department, Lalbazar, Kolkata – 700001*” only to create a misconception in the mind of general public that she is working in the Kolkata Police Force.
10. Mr. Yousuf submits that it also reveals that some matters where criminal or civil cases are pending between an aggrieved person or the opposite party, the petitioner would often interfere into the Court cases. The said act of the petitioner was intimated to the Principal Secretary of

the Department of Women, Child Development and Social Welfare and requested to replace the petitioner with a fresh Counselor.

- 11.** Mr. Yousuf submits that in anticipation of the replacement of the petitioner, the petitioner was asked to report back to her controlling NGO, and supporting staffs have been withdrawn by the Reserve Officer. The Principal Secretary of the Department requested the NGO, namely, 'Forum for Social Action' to depute a new Counselor for Kolkata Police Head Quarters, Lalbazar in place of the petitioner.
- 12.** Mr. Manoj Malhotra, Learned Advocate representing the respondent no.6 submits that the petitioner was appointed purely on temporary basis and as per her appointment order, she is entitled to get only an honorarium of Rs. 2,500/-. He submits that Counselling Centers were being operated in terms of the funds provided by the Central Welfare Social Board (CWSB) and on and from 2023, the said authority has stopped funding the said scheme and at present the said scheme is not in operation.
- 13.** Mr. Malhotra submits that the letter dated 19th August, 2023, issued by the respondent no.7 being a Non-Governmental Organization and cannot be treated as an authority under Article 12 of the Constitution of India. He submits that the petitioner has not challenged the same. He submits that the respondent no.6 only directed the respondent no.7 to depute a fresh Counsellor and to intimate the same to the respondent no.6.

- 14.** Ms. Sarmila Das, Learned Advocate representing the respondent no.7 submits that the Central Social Welfare Board through Deputy Director (VAB) wrote a letter on 3th August, 1998 to the Chairman, West Bengal State Social Welfare Advisory Board requested to take necessary steps to identify suitable NGO's and to send their proposals along with letter of the respective Police Department to enable the office to finalize the matter as per the decision of the Executive Committee meeting and no further release for 1998-1999 would be made until execution of the said instructions.
- 15.** Ms. Das submits that as per instruction, the Deputy Director (VAB), the Police Counselling Centre should be run through NGO only. On 18th September, 1998, regarding replacement of Staff of West Bengal Social Welfare Advisory Board deputed to Calcutta Police by NGO's only. By a letter dated 16th December, 1999, the Deputy Director (VAB) requested the Chairman, West Bengal State Social Welfare Board intimating the approval of handing over of the family Counselling Centre at Police Head Quarters to 'Forum for Social Action' Calcutta with effect from 1st April, 1999 and sanction has also been accorded for honorarium of 1+5 Counsellors, Peon, Typist, Conveyance and Contingencies.
- 16.** Ms. Das submits that 'Forum for Social Action' is a registered NGO and the writ petitioner is associated with the same. The petitioner is not a staff of the 'Forum for Social Action'. Only on the basis of the direction for replacement of the writ petitioner by the West Bengal Social Welfare Board, the respondent no. 7 requested the petitioner to submit

resignation as requested her to send a reply, if any. The petitioner denied for her resignation. She submits that the writ petitioner is not appointed by the respondent no.7, thus as per the direction of the West Bengal Social Welfare Board, the respondent no.7 only requested the petitioner to submit resignation.

17. The petitioner has raised two issues:

- i. If the Reserve Officer is not the appointing authority, can pass the impugned order dated 31st July, 2023.*
- ii. If the respondents removed the petitioner from service with an allegation, opportunity of hearing should have been given to the petitioner or not.*

18. By a letter dated 31st July, 2023, the Reserve Officer, Detective Department, Kolkata directed the petitioner to report her concern authority with immediate effect and staffs have been withdrawn and have reported to the Reserve Office of the Detective Department. The petitioner was appointed by the West Bengal Social Welfare Advisory Board as Counsellor at the Family Counselling Centres at Police Head Quarters under the project of Central Social Welfare Board and direct administrative control of West Bengal Social Welfare Advisory Board purely on temporary basis with an honorarium of Rs. 2,500/- per month on 31st May, 1995.

19. On 13th July, 2023, the Director (CSWB), the Government of India, Ministry of Women and Child Welfare Department informed to all concern that a policy decision has been taken by the Ministry that the

Family Counselling Centers (FCCs) are to be kept operational with budgetary support from One Stop Centre (OSC) Scheme from the year 2023-2024. As soon as policy decision is finalized, further direction will be communicated.

20. On 14th August, 2023, the Joint Secretary to the Government of West Bengal informed the Secretary, Forum for Social Action for appointment of fresh Counsellor in the Family Counselling Centre, Lalbazar Police Head Quarter in place of the petitioner. In the said communication, serious allegations have been made against the petitioner. On the basis of the said letter, the Secretary of 'Forum for Social Action' by a letter dated 19th August, 2023, forwarded the said complaint to the petitioner with the request to submit her resignation and also directed the petitioner to send her reply, if any, within a week. The petitioner has submitted her reply to the respondent no. 7. It is the specific case of the respondent no.7 that the petitioner refused to resign and the respondent no.7 has no authority to terminate the service of the petitioner, the respondent no.7 only requested the petitioner to submit resignation.

21. The Reserve Officer of the Detective Department, Kolkata, only directed the petitioner to report the concern authority and staffs of the Detective Department have been withdrawn from the office of the petitioner. The stand taken by the respondent no.6 that the West Bengal State Social Welfare Board (WBSSWB) does not directly operate the FCCs but only partners with registered and eligible Non-Governmental Organizations

and Voluntary Organizations. The respondent no. 6 has not denied that the respondent no.6 has not appointed the petitioner.

- 22.** There is no documents have been brought on record that the respondent no.6 though appointed the petitioner but subsequently, the petitioner is working under the respondent no. 7. The petitioner in her reply has categorically denied the allegation made against the petitioner.
- 23.** The Reserve Officer, Detective Department, has only directed the petitioner to report her concern authority with immediate effect and staffs have been withdrawn and have reported to the Reserve Office of Detective Department. The petitioner has challenged the same in the present writ application. In the order of the Reserve Officer, there is no allegation against the petitioner. After the impugned order dated 31st July, 2023, the respondent no.6 forwarded a letter to the respondent no.7 making serious allegations against the petitioner which the petitioner has brought to the notice of this Court by a supplementary affidavit. In the written notes of argument, the respondent nos. 1 to 5 have narrated the said allegations against the petitioner. It is settled law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

- 24.** The petitioner was appointed by the Chairman, West Bengal State Social Welfare Board in the year 1995 on temporary basis as Counsellor and since then the petitioner is working at the FCC. The respondents have made serious allegations against the petitioner. The respondent no.7 in its written argument categorically stated that the respondent no.7 has no authority to terminate the petitioner and thus requested the petitioner to submit resignation. As per the impugned order issued by the Reserve Officer, the petitioner is relieved from her duty. Indirectly the service of the petitioner is terminated/restrained the petitioner to perform her duty. It is well settled law that termination of a temporary employee or a probationer or even a tenure employee without casting any stigma may not be interfered with by the Court. But the Court is not debarred from looking at the attendant circumstances, namely, the circumstances prior to the issuance of the order of termination to find out whether the alleged inefficiency really was the motive for the same order. If the Court comes to a conclusion that the order was, in fact, motive, then obviously the order not be interfered with, but if the Court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed.
- 25.** This Court finds that the respondents have made serious allegations against the petitioner but have not passed an order of termination. The

Reserve Officer is not an appointing authority but he has only directed the petitioner to report her duty to her concern authority and withdrawn her supporting staffs. On the other hand, the respondent no. 6 forwarded a letter to the respondent no. 7 with several allegations and the respondent no. 7 forwarded the same to the petitioner and directed the petitioner to submit resignation. In the written notes of argument, the respondent no. 7 admitted that the respondent no. 7 has no authority to terminate the service of the petitioner, thus it is clear that indirectly the service of the petitioner is terminated/ restrained the petitioner to perform her duty without giving any opportunity of hearing or due process of law.

- 26.** Considering the above, the respondents are directed to allow the petitioner to work as Counsellor. If the respondents intends to initiate any proceeding against the petitioner, the respondents are free take appropriate action against the petitioner in accordance with law. As the respondents have illegally terminated the service of the petitioner/ restrained the petitioner to perform her duty without following the due process of law, the respondents are directed to pay all consequential benefit to the petitioner within a period of four (4) weeks from the date of receipt of this order.

- 27. WPA No. 19949 of 2023 is allowed.**

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.)