

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 1794 OF 2022
With
IA CAN 1 of 2022

Suily Banerjee

-Vs.-

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Supratim Dhar, Adv.
 Mr. Shuvro Prokash Lahiri, Adv.
 Mr. Tirupati Mukherjee, Adv.
 Mr. S. Dhar, Adv.
 Mr. K. Ganguly, Adv.
 Ms. S. Chakraborty, Adv.

For the State : Mr. Lalit Mohan Mahata, Adv.
 Mr. P.B. Mahata, Adv.

Judgment On : 14.09.2023

Apurba Sinha Ray, J. :-

1. Being aggrieved by and dissatisfied with the judgment and order dated 29.09.2022 passed in WPA No. 17947 of 2022 the appellant has preferred the present appeal.

2. The appellant being an Anganwadi worker who was appointed in Andal Integrated Child Development Services on 05.07.2002, by an order of Director of the Social Welfare, Government of West Bengal, was transferred from North Jambad-36 to Tilaboni Dangal – 140 by virtue of Memo No. 77/ICDS/PAN dated 29.07.2021, according to her, without any cogent reason. According to the appellant on 26.06.2022 a theft was committed in the relevant Anganwadi centre for which the appellant went to file a written complaint at the local Bonbahal Police Phari under Andal Police Station on 27.06.2022 but the same was not accepted. Finding no other alternative she submitted a written complaint to the Commissioner of Police, Asansol, West Burdwan on 30.06.2022 but the concerned police officers did not take any step. Thereafter, the appellant approached the office of Child Development Project Officer and intimated the officer about the commission of theft at the said Anganwadi centre.

3. Suddenly on 12.07.2022 when the appellant went to the centre, she found that the door was broken open and the Child Development Officer and

Supervisor had handed over the charge of the Anganwadi centre at North Jambad-36 to one Smt. Nibedita Rajbhar in place of the appellant with the help of local people. A written complaint was filed by the appellant with the Officer-in-Charge of Andal Police Station and she requested for protecting her right but the police did not take any action. On 21.07.2022 the petitioner was directed by the Child Development Project Officer vide Memo No. 86/ICDS/PAN to join Tilaboni Dangal-140 immediately. The appellant filed a Writ Petition being no. 17947 of 2022 before a Learned Single Judge of this Court praying for issuance of writ of mandamus to the concerned authority for setting aside the transfer order dated 29.07.2021 and also for reinstating the appellant in North Jambad-36 Anganwadi centre. However, the said writ application was dismissed by the Learned Single Judge and hence this appeal.

4. Mr. S.P. Lahiri, Learned Counsel appearing on behalf of the appellant submitted that there is no provision for transfer of Anganwadi worker in the Memorandum No. 288-SW/3S-225/05 dated 25.01.2006 issued by the Government of West Bengal, Department of Women and Child Development and Social Welfare for recruitment of Anganwadi workers. Learned Counsel also submitted that the distance between North Jambad Anganwadi centre and Tilabani Dangal to which the appellant was transferred is about 28 Kms. and the distance from the residence of the appellant to Tilaboni centre is approximately 31.5 Kms.. Learned Counsel further stated that the scheme of Anganwadi centre always utilizes the assistance of the local people and for

which the residents of the locality are usually appointed in an Anganwadi centre. If the appellant is transferred to a place beyond her locality it would, in fact, militate against the solemn purpose for which specific provisions have been made for appointment of local people as Anganwadi workers. The proposed transfer would not only prejudice the rights of the appellant but also cause difficulties to the beneficiaries of Tilaboni Dungal centre to which she has been transferred. It was further submitted that as the appellant lodged complaint against the theft of food and utensils which occurred at the North Jambad Anganwadi centre, the appellant was directed by the CDPO by Memo No. 86/ICDS/PAN dated 21.07.2022 to join Tilaboni Dungal- 140 immediately. This goes to show that the authority did not accept the straightforwardness and honesty of the appellant and the transfer was penal in nature.

4.1. Learned Counsel appearing for the State of West Bengal, Mr. Lalit Mahata, contended that several complaints were received from the guardians of beneficiaries and also from the local people of North Jambad Anganwadi centre against the appellant and for which a show cause notice was served upon her asking her to furnish explanation for negligence in performing her duty. The appellant refused to follow the instructions of her Superiors. It was also stated that the Sector Supervisor visited the Anganwadi centre on 24.06.2021 for enquiry and interacted with the local beneficiaries. The Supervisor found severe irregularities on the part of the appellant in discharging her duties.

5. According to the learned counsel of the State, the appellant disobeyed all the terms and conditions relating to the post of Anganwadi workers and her performance was also discussed with the Standing Committee of Sishu-O-Nari Unnayan, Janakalyan-O- Tran Sathyee Samiti of Pandabeswar Panchayat Samiti on 22.07.2021 in presence of the Block Development Officer. The transfer order of the appellant was issued in terms of provision of government order no. 1897-SW dated 07.04.1989 wherein it is provided that if the Child Development Project Officer received any complaint against the Anganwadi worker he may cause an enquiry to arrive at a correct decision regarding the veracity of the complaint lodged in the interest of efficient discharge of service. If the Child Development Officer is satisfied there are genuine causes of public grievances against the Anganwadi worker then Child Development Officer may transfer the Anganwadi worker to a suitable place.

6. Learned State Counsel also pointed out that no food form or monthly progress report was submitted by the appellant for the month of June, 2022, and accordingly, honorarium and additional honorarium could not be paid to the appellant for the month of June, 2022. On 16.07.2022 the appellant sent a letter containing the information of theft which occurred on 26.06.2022 at the Anganwadi centre which was received by CDPO on 18.07.2022. The appellant should have intimated the alleged theft soon after the detection of such theft.

7. According to the State counsel as the appellant's action was highly negligent and irresponsible the concerned authority directed the appellant by letter dated 21.07.2022 to join the Tilaboni Dungal – 140 as per her transfer order dated 29.07.2021 and take over the charge thereof but the appellant refused to receive the letter. Learned Counsel also argued that the appellant remained absent on several dates without informing the superior authority and during enquiry the Sector Officer found that the door of the Anganwadi centre was closed. A letter was issued to the appellant for ascertaining the reasons for her absence and the appellant replied by letter dated 10.08.2022 that she was absent due to some medical emergency. However, she neither took any permission from her superior officer nor submitted any leave application. Moreover, complaint was received from the beneficiaries and supervisor to the effect that since 27.06.2022 the Anganwadi Centre was closed and they were deprived of the necessary benefits. Thereafter, finding no other alternative mode to continue the public service for the downtrodden people who used to come to that ICDS centre, the padlock of the Anganwadi centre was broken open in consultation with the Block Administration, Panchayat and police personnel and also in the presence of local beneficiaries. Thereafter, the charge of the concerned centre was handed over to Nibedita Rajbhar.

8. After hearing the learned counsel of both sides this Court by its order dated 28.04.2023 directed the concerned authority to complete the pending proceeding against the appellant and to submit a report of the said

proceeding. Accordingly, the Child Development Project Officer submitted a report on 16.05.2023 stating that the appellant refused to accept the allegations levelled against her by the beneficiaries of North Jambad-36 and the appellant claimed the allegations to be false.

Court's View

9. It is true that the memorandum bearing No. 288-SW/3S-225/05 dated 25.01.2004 does not make any provision for transfer of Anganwadi workers from one centre to another. It is further correct that the two case laws submitted by the appellant viz. **State of Karnataka & Ors. Vs. Ameerbi & Ors. reported at MANU/SC/8767/2006** and **State of Himachal Pradesh & Ors. Vs. Purna Devi reported at MANU/SC/0333/2015** have hinted that the presence of Anganwadi workers at their respective villages is extremely important and they are supposed to make significant contribution to the society. It is also laid down in the later case that Anganwadi workers and Anganwadi helpers are community based front line honorary workers under the ICDS and are central figures in helping the community as to the needs of the children by rendering service under the scheme. They are required to be appointed from the local community who come forward to render their services on part time basis in the area of child care and development. As per the guidelines, selection of Anganwadi helpers requires that the women appointed for such services should be from local village and acceptable to the local community.

10. From the above it transpires that the said case laws have underlined the need for appointing Anganwadi workers and helpers from the locality of the concerned Anganwadi centre. However, the situation in our case is different. In this case the appellant was also appointed from the locality of the concerned Anganwadi centre, but it appears that the appellant was not performing her duties as per requisite norms under the scheme. It is also found from the materials on record that since 2019 the local people were making complaints against the appellant that she was irregular in attendance, she was not giving proper quantity of food to the children, she also misbehaved with the beneficiaries and local people. The materials on record further show that the appellant was directed to mend her ways but in vain. It is seen from the page no. 107 of the stay application that one complaint dated 25.07.2019 was lodged against the appellant before the Pradhan of Bohula Gram Panchayat and copies of such complaint were sent to several higher-ups which include the local MLA of Pandabeswar constituency, BDO Pandabeswar, CDPO Pandabeswar, Sobhadipati Pandabeswar Panchayat Samiti and ICDS Supervisor Pandabeswar. The allegation contained in the said letter of the local villagers was that the appellant being the teacher of ICDS centre North Jambad was not regular in her duty though all the children used to be present in the concerned Anganwadi centre. Moreover, food with low nutritious value was being provided to the children. Although all the children were entitled to a full egg but the appellant was providing half an egg to each of them. The water used for cooking was also not good for which they were apprehensive about the

health of their children. Though they tried to discuss the matter with the appellant but she misbehaved with them. An enquiry report was filed by the Supervisor of ICDS Project on 24.06.2021 wherein it was stated that the appellant was not attending the centre regularly, half egg was being provided to each of the beneficiaries instead of full egg, food staff was being kept in Raju Mandi's house and not in the Anganwadi centre. Stale food was being distributed to the beneficiaries and the appellant misbehaved with the beneficiaries. On 22.07.2021 the matter was discussed in Sishu-O-Nari Unnayan, Janakalyan-O- Tran Sathyee Samiti of Pandabeswar Panchayat Samiti and for the purpose of smooth public service the said committee recommended transfer of the appellant to the adjacent Tilaboni Dangal under Nabagram Gram Panchayat. It is also found from the annexures being page nos. 105, 106 that resolution was taken for transfer of the appellant by the said committee.

11. Therefore, though the case laws as cited by the appellant indicate that local women should be appointed in an Anganwadi centre, yet it is needless to mention such scheme or such provision has been made only for the purpose of smooth functioning of the concerned Anganwadi centre. This provision has been made so that local beneficiaries can get proper service from the women who are appointed from their locality and who will be able to come to the centre at proper time and give proper nourishment to their children for which these beneficial provisions have been made under the law of the land. Therefore, local women are appointed for the purpose of

rendering better service to the public. But when such noble cause, as espoused not only in the provisions of the scheme but also in the above referred case laws suffer at the hands of the Anganwadi workers like the appellant, the concerned authority cannot remain mute spectator. If the Anganwadi workers do not come in proper time, if they remain habitual absentees at the centre, if they do not give proper food in proper quantity to the beneficiaries, can the said recalcitrant Anganwadi workers claim that they cannot be transferred since the scheme provides for engagement of local woman. Clearly, the ratio of the above case laws does not support such attitude of the Anganwadi workers. Moreover, the factual matrix of the above case laws are not akin to the present one.

12. Needless to mention that even if the concerned regulations, as placed by the learned counsel of the appellant, do not make provision for transfer of Anganwadi workers from one centre to another centre, the concerned authority has every authority to consider whether such transfer would subserve the public interest or not. In this case there are ample materials on record to show that beneficiaries of the North Jambad Centre had suffered during the period when the appellant was in charge of the said centre. Therefore, if public interest warrants her transfer from the said centre, the concerned authority can do so for the sake of public service. In **Black's Law Dictionary**, Ninth Edition, June, 25, 2009, A Thomson Reuters business, page no. 1350, the term 'public interest' has been defined as – (1) The general welfare of the public that warrants recognition and protection. (2)

Some-thing in which the public as a whole has a stake; esp., an interest that justifies governmental regulation. Therefore, when public services are disrupted due to an Anganwadi worker's attitude, the Authority can make appropriate order commensurate with the situation for the interest of the public.

13. It is true that there is no express provision for transfer of an Anganwadi worker in the abovementioned Rules but at the same time, there is no express prohibition of transfer also. Moreover, we have gone through the report submitted by the Child Development Project Officer, Pandabeswar, ICDS Project pursuant to our direction dated 28.04.2023.

Relevant excerpts of the report are as follows:-

"Pursuant to the above order, the appellant. Anganwadi Worker Smt. Suily Banerjee was called for a hearing on 16.05.2023 (12.00 noon) at the chamber of BDO, Pandabeswar, O/o BDO, Pandabeswar Block, Dist- Paschim Bardhaman, vide Memo No76/ICDS/PAN dated 08.05.2023. The hearing was conducted in the presence of 1)Mahasweta Biswas, BDO Pandabeswar Dev. Block, 2)Papiya Biswas, CDPO, Pandabeswar ICDS Project, 3)Ashok Mondal, BWO Pandabeswar Dev. Block and 4) Dolon Champa Biswas Supervisor, Pandabeswar ICDS Project. The entire hearing procedure was videographed with the consent of Smt. Siuly Banerjee. Smt. Banerjee was asked different questions on, and requested to explain her position regarding the disruption of functioning of the ICDS program at AWC No. 36, North Jambad, of Pandabeswar ICDS Project.

a) Smt. Banerjee was asked to explain why the local panchayat members, local people and guardians of the beneficiaries of AWC No. 36 had complained about the quality of service delivered by her at the AWC. These complaints included allegations against her, of not being sincere in the performance of her duties at the AWC, not giving proper amount of egg or vegetables to the beneficiaries as was required as per the SNP menu, misbehaving with

children and beating them, and misbehaving with the guardians of the beneficiaries.

b) Smt. Banerjee was also asked to explain why she had refused to receive any of the several show cause letters issued to her by the CDPO, during the period from 18.09.2021 to 21.07.2022.

c) During the hearing, the appellant. Smt Suily Banerjee was also asked to explain her absence from duty at AWC No 36 since 01.07.2022, and why she had not informed the office about her absence until 10.08.2022.

d) She was also asked to explain why she had delayed informing the office about an incident of theft that occurred at her AWC on 26.06.2022, and why she had not reported that incident until 18.07.2022.

e) Smt Banerjee was also asked to explain why she had come to AWC No36 on 12.07.2022 since she had solemnly affirmed in her petition submitted to the Hon'ble Court that she had been prevented by a throng from entering that AWC on that day.....

Comments of CDPO, Pandabeshwar ICDS Project

a) The attitude of the appellant, Smt Suily Banerjee during the hearing was very casual, and she appeared to be quite indifferent and insensitive to the problems that had been created in AWC No 36 as a result of her negligence. She kept on denying the allegations against her made by the local people, but was unable to give any reason for the public agitation against her. She was not in a position to defend herself when informed that the complaints against her had been corroborated by an enquiry conducted by the concerned sector supervisor.

b) Her admission of the fact that, she had deliberately not received any show cause letter from the office on grounds of the allegations being untrue, and that she had not bothered to give any reply to the show cause letters on the same grounds: gave indications of an attitude of arrogance and indifference to controlling authorities.

c) The statement of Suily Banerjee regarding her continued absence from her AWC due to medical complications, and not being able to join for duty until she is medically fit; and the fact that she was unable to produce any documents in support of her medical condition: raises doubts about the sincerity of her

intentions, and her willingness and capacity to continue as an Anganwadi Worker in service.

d) Prima facie, the solemn affirmation of the appellant Smt Banerjee regarding her visit to her AWC on 12.07.2022 appears to be untrue, because she was not visible on that day at the AWC, when the police entered the AWC after breaking the lock, in the presence of the CDPO, BDO and local panchayat member. Her statement about going to her AWC on 12.07.2022 for performing her duty, appears to be very unnatural, since she has stated that she is medically unfit and cannot join for duty.

e) Her explanation regarding delayed communication to the ICDS office about the incident of theft at her AWC, because of her inability to get any document from the local police station after reporting about the theft: gives indication of a lackadaisical attitude to her duty.

The misbehaviour of Smt Suily Banerjee with the local people and guardians of the beneficiaries of her AWC, and her negligent attitude to work resulting in disruption of services at the AWC, has created a public resentment against her. The CDPO was compelled to request for police action in order to forcibly open the AWC by breaking the lock on 12.07.2022, in order to ensure the resumption of services at the AWC. Since Anganwadi Workers are not entitled to any leave except Casual Leave and Maternity Leave, the appellant Smt Suily Banerjee is not being paid any honorarium with effect from 01.07.2022.

Under the circumstance stated above, it is felt that payment of Honorarium to the appellant Smt Suily Banerjee should continue to remain stopped until she joins for duty, if she joins within 30.06.2023. However if she does not join for duty by 30.06.2023, i.e. if she continues to remain absent for more than a year without honorarium, process should be initiated for discharging her from service: since leave without honorarium is allowed for a maximum period of one year, as per Memo No 5126-SW dated 10.12.2009 of OSD and Ex Officio Joint Secretary to the Govt of WB.

This is for submission of the above report to the Hon'ble High Court on 08.06.2023, or the next day of hearing when the business of the Hon'ble Court permits: in compliance with the solemn order dated 28/04/2023 of the Hon'ble High Court, in the matter of MAT NO 1794 of 2022.

Encl: Proceedings of Hearing of Smt Suily Banerjee i.c.w MAT 1794 of 2022"

14. From the said report it transpires that the attitude and performance of the appellant do not match with the required attitude and performance of a model Anganwadi worker. Therefore, as Sishu-O-Nari Unnayan, Janakalyan-O- Tran Sathyee Samiti of Pandabeswar Panchayat Samiti has taken the decision to transfer the appellant from North Jambad-36 to Tilaboni Dungal-140 in the interest of public service we are not inclined to exercise our discretion in favour of the appellant.

15. Learned counsel for the appellant has tried to impress upon this court that as the appellant lodged complaint before the police authority on 30.06.2022 for the occurrence of theft at the Anganwadi centre on 26.06.2022, the authority passed the relevant order on 21.07.2022 transferring her from North Jambad to Tilaboni Dungal. But such argument does not impress us since it is found that long before the alleged commission of theft at the Anganwadi centre the appellant was transferred from North Jambad-36 Anganwadi centre to Tilaboni Dungal-140 centre by Memo No. 77/ICDS/PAN dated 29.07.2021. However, the learned counsel for the appellant has further argued that the transfer order dated 29.07.2021 was not given effect to by the authority and as such the appellant could not join Tilaboni Dungal centre. This argument also does not find favour with us since from the materials on record which includes the admission of the appellant (which may be found at page 58, Annexure P-6 of the stay application) that she refused to accept the transfer order as the same, according to her, contained false allegations against her. The materials on

record further suggest that time and again she was directed to hand over charge of North Jambad-36 Anganwadi centre to Smt. Nibedita Rajbhar after the transfer order dated 29.07.2021 but the appellant did not pay any heed to such order of the concerned authority.

16. It is also found from the materials on record that from 27.06.2022 the appellant remained absent without intimation to the authority and as a result the beneficiaries suffered a lot till 12.07.2022. It appears that no service as per the relevant scheme was rendered to the beneficiaries and finding no other alternative the door of the Anganwadi centre was broken open and the charge of the said centre was transferred to Smt. Nibedita Rajbhar, another Anganwadi worker. The materials further show that no medical certificate was produced from the side of the appellant showing that she was actually in the midst of a medical emergency during the relevant period. Even if she was in great medical emergency, she was obliged to inform the concerned authority about her medical emergency so that the authority could have made alternative arrangements for continuing the emergent public services for the benefit of the local downtrodden people. The lackadaisical attitude of the appellant was palpable. The appellant does not deserve any sympathy and as such we do not find any apparent infirmity in the impugned judgment and hence the same is affirmed.

17. In fine, the present appeal is dismissed. No order as to costs. The connected application is also disposed of. Interim order, if any, stands vacated.

18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)