

**18.12.2024**

**Sl. No. 02**

**Ct. No. 23**

**Srimanta**

**WPA/22813/2024**

**Jesmin Shaikh**

**-Vs.-**

**The State of West Bengal & Ors.**

Mr. Biswarup Biswas,

Mr. Gora Chand Samanta

... for the petitioner.

Mr. Ansar Mondal,

Ms. Srilekha Bhattacharyya

...for the State.

The petitioner is engaged as an 'Anganwadi Worker' under the Child Development Project Officer, Canning – I, ICDS Project, South 24-Parganas. The petitioner says that she is residing with her husband and old aged mother-in-law at Village – Chaora, P.O.- Sarisa, P.S.-Diamond Harbour, South 24-Parganas, which is approximately 120 km from her working place, i.e., ICDS Centre at Village – Daria, in Serial No. 196 Centre under Canning – I ICDS Project, District – South 24-Parganas. The petitioner is seeking transfer from her present place of posting to a place nearby to her residence.

The issue which surfaced on the previous hearing was that whether an 'Anganwadi Worker' can be transferred beyond the zone for which she has been appointed. This is because the whole basis of appointment of an 'Anganwadi Worker' is from the nearing areas of the sub-centre for which she is engaged. The advertisements are also published in such a manner that only local residents are permitted to apply for being engaged as 'Anganwadi Worker' in the Sub-Centre/Health Centre in an around the Gram Panchayat or Gram Sabha or the Block, as the case may be wherein such person resides.

In this context, the learned Advocate for the petitioner has placed before this Court the Division Bench Judgments respectively dated 11<sup>th</sup> December, 2018 passed in **MAT/211/2017 (Mira Banerjee – Vs.- State of West Bengal and Ors.)** and dated 14<sup>th</sup> September, 2023 passed in **MAT/1794/2022 (Suily Banerjee –Vs.- The State of West Bengal & Ors.)**. In the Judgment in **Mira Banerjee** (supra), the Court was concerned with a question as to whether the services of an 'Anganwadi Worker' is transferrable as it was urged that the order of transfer since the services of an 'Anganwadi Worker' is not transferrable was without jurisdiction. The Division Bench, however, was not required to decide on that

issue as at the time of final hearing of the appeal, the appellant therein had surpassed the age of superannuation and as such was not permitted to work beyond such age with effect from 4<sup>th</sup> January, 2018. The Division Bench, however, noticed that the Memorandum dated 25<sup>th</sup> January, 2006 governing the recruitment of 'Anganwadi Workers', in particular paragraph 20 therein provided for an embargo in engaging an Anganwadi Worker/Karmi cannot be engaged beyond 60 years of age. In the Judgment of ***Suily Banerjee*** (supra), the Memorandum No. 288-SW/35-225/05 dated 25<sup>th</sup> January, 2006 issued by the Government of West Bengal, Department of Women and Child Development and Social Welfare for recruitment of 'Anganwadi Workers' again fell for consideration. The Division Bench in paragraph 13 of the said Judgment held that there is no express provision for transfer of an 'Anganwadi Worker' in the Rules but at the same time, there is no express prohibition for transfer also. The Division Bench then held that the transfer order issued to the appellant which was under challenge was not unjustified in the facts and circumstances of that case.

Although, the issue whether the service of an 'Anganwadi Worker' is transferable or not has not been directly decided by either of the Judgments of

the two Division Benches cited by the appellant but the fact remains that the transfer orders being the subject-matter of the two appeals have not been interfered with even though it was contended that such transfer is impermissible and the order of transfer was without jurisdiction.

Going by such Judgments and orders it cannot be, therefor, said that the services of an 'Anganwadi Worker' is not transferable otherwise the Division Benches would have interfered with the transfer orders. However, a transfer is dependent on the facts and the circumstances of each case. A transfer order cannot be arbitrary or tainted with illegality or should not appear to be issued for victimizing an 'Anganwadi Worker' as laid down in 2004 (11) SCC 402 (State of U.P and others vs. Gobardhan Lal). This is more so because transfer orders are normally not interfered with by the Court as it falls under the administrative domain considered for smooth administration in the employer's organization. Decision to transfer should also be taken keeping in mind that the whole process of appointment of an 'Anganwadi Worker' is to serve public at large in a convenient manner at the grass root level for which the 'Anganwadi Workers' are normally engaged from amongst the local residence

and such transfer order should be for more convenient and in better in better public interest.

In the aforesaid facts and circumstances, since the petitioner is seeking transfer owing to her marriage for which the petitioner has been residing at her matrimonial abode with her husband and aged ailing mother-in-law which is far away from the Sub-Centre/Health Centre wherein the petitioner is presently posted and the subject memorandum does not either provide for or bars transfer, the respondent authorities should consider the representation made by the petitioner seeking transfer to a Sub-Centre/Health Centre nearby to her matrimonial abode and dispose of the same by a reasoned order within a period of eight weeks from the date of communication of this order.

It is made clear that I have not gone into the merits of the grounds on which the petitioner has sought for transfer and as such the respondent no. 9 being the Child Development Project Officer, ICDS Project, Additional Charge Diamond Harbour Block-II and the respondent no. 4 shall as the case may be dispose of the petitioner's representation without being any manner influenced by the observations made in this order and bring an end to the petitioner's prayer by logical conclusion.

Nothing further remains to be adjudicated in this writ petition and the same is disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of the Calcutta High Court.

**(Arindam Mukherjee, J.)**