
(2018) 07 CAL CK 0057
In the Calcutta High Court
Case No : Writ PetitionNo. 17444 (W) of 2017

Hemanta Kumar Mukhopadhyay	Vs	APPELLANT
State Of West Bengal & Ors.		RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2018) 07 CAL CK 0057

Hon'ble Judges : SHAMPA SARKAR, J

Bench : Single Bench

Advocate : Sudipta Dasgupta, Anath Nath Naskar, Joytosh Mazumder, Pinaki Dhole, Avishek Prosad, Soumik Ganguly

Final Decision : Dismissed

Judgement

Shampa Sarkar, J.

1. Aggrieved by and dissatisfied with the order dated June 8, 2017 passed by the District Magistrate Bankura, the Writ Petitioner (hereinafter referred

to as the petitioner) filed this application under Article 226 of the Constitution of India (hereinafter referred to as the writ petition). 2. The contention

of the petitioner was that he was engaged as a Social Audit Volunteer under the respondent Dhansimla Gram Panchayat from 2014 and his assignment

was for a duration of merely five to six days per year. While discharging his functions as a Social Audit Volunteer he was engaged as an Awaas

Bandhu, pursuant to an interview held for such engagement by a letter dated August 31, 2016 by the Block Development Officer Sonamukhi

Panchayat Samiti and the petitioner under-went training prior to joining as Awaas Bandhu. He was discharging his duties and joined the post on

September 2, 2016. His appointment was contractual in nature and as per a

policy decision of the State Government a contractual government employee, was entitled to work upto the age of 60 years.

2. Suddenly, an order was passed dated September 9, 2016 by the Block Development Officer and Executive Officer Sonamukhi Panchayat Samiti, Bankura by which his appointment was cancelled. He contended that such cancellation was violative of the principles of natural justice and further that he would be rendered jobless. Accordingly, he made a representation dated December 22, 2016 to the District Magistrate, Bankura and Executive Officer, Bankura Zila Parishad, the respondent no. 2, ventilating his grievances.

3. As the respondent no. 2 did not take any steps in disposing of therepresentation the petitioner filed an application under Article 226 of the Constitution of India before this Court being W.P. no. 1863 (W) of 2017. The said representation was taken up for hearing on May 8, 2017 and an order was passed directing the District Magistrate, Bankura and Executive Officer, Bankura Zilla Parishad to take a decision on the pending representation of the petitioner dated December 22, 2016.

4. Pursuant to the said direction by this Court, the respondent no. 2 took a hearing of the petitioner and the Block Development Officer, Sonamukhi Block Development and passed an order, which is impugned to this writ petition.

5. In the writ petition which is taken up for hearing now, thepetitioner prayed for quashing and/or setting aside of the order dated June 8, 2017 passed by the respondent no. 2 and also setting aside the order dated September 9, 2016 passed by the Block Development Officer and Executive Officer, Sonamukhi Panchayat Samiti. He further prayed for his engagement as â??Awaas Bandhuâ??, within Sonamukhi Panchayat Samiti.

6. By an order dated July 18, 2017, the parties were directed toexchange affidavits. Accordingly, affidavit-in-opposition was used on behalf of the respondent no. 3, that is, the Block Development Officer, Bankura and Executive Officer, Sonamukhi Panchayat Samiti, affirmed by the Joint Block Development Officer, Sonamukhi Block Development being duly authorised by respondent no. 3. The petitioner filed his affidavit-in-reply.

7. According to the said respondent, the petitioner was neverappointed to any sanctioned post either on permanent or contractual basis. There was no interview for his appointment as â??Awaas Bandhuâ?. That it was incorrect to say that the petitioner was terminated without following the Rules and

in violation of the principles of natural justice. According to the respondents, the District Magistrate, Bankura by memo no. 4407 (22) ZP/2015 dated

November 20, 2015 issued an order regarding engagement of "Awaas Bandhus" from Social Audit Volunteer/G.R.S. /C.S.P. of N.R.L.M. In

compliance to the said order the Block Development Officer and Executive Officer Sonamukhi Panchayat Samiti by a letter dated August 31, 2016

engaged some Social Audit Volunteers as "Awaas Bandhu". The said respondent categorically maintained that the petitioner had misrepresented

the facts in the writ petition. Soon after being engaged as "Awaas Bandhu" a meeting was organized on September 1, 2016. The Block

Information Officer conducted the meeting on behalf of the Block Development Officer. In the said meeting the Social Audit Volunteers who were

sought to be engaged as "Awaas Bandhus" expressed their inability to perform the specialized work and as such their engagement order was

cancelled by the Block Development Officer. That the details of any Government Policy on the basis of which an employee could claim continuation

of a contractual service upto the age of 60 years was also not furnished by the petitioner. The petitioner was not appointed pursuant to any interview

as alleged. No training was imparted to him and he had never started functioning as "Awaas Bandhu".

8. It was the further case of the respondent no. 3 that the assignment of the petitioner as Social Audit Volunteer would not be taken away and they

would be able to continue as volunteers even after the additional engagement as "Awaas Bandhu" was discontinued. According to the respondent

no. 3 the scheme "Indira Awaas Yojana" (in short IAY) has been replaced by Pradhan Mantri Awaas Yojana " (PMAY) and there was no

scope in the new scheme for engagement of any "Awaas Bandhu". The petitioner was engaged with an additional work, temporary in nature and

the question of termination of the service of the petitioner did not arise.

9. The petitioner filed his affidavit-in-reply and denied the contentions of the respondent no. 3 but he did not produce the Government orders and

circulars on the basis of which he had based his claim before this Court. He did not produce any material to show that the appointment was made

pursuant to an interview against a sanctioned post even if, contractual in nature.

10. While addressing the issue, the learned Advocate appearing on behalf of the

petitioner contended that there were other Awaas Bandhus

who continued to serve in the said post, and as such he was discriminated upon. He further submitted that a termination of this nature was arbitrary,

unreasonable and violative of Article 14 of the Constitution of India, as he was not given an opportunity of hearing. According to the learned

Advocate, the petitioner would become jobless and the action of the Government was violative of the Government orders and circulars, which entitled

contractual workers to work upto the age of 60 years. He submitted that the order of cancellation of engagement dated September 9, 2016 was bad in

law and ought to be set aside. In support of his contention he relied on the decision Central Inland Water Transport Corporation Limited and Another

Versus Brojo Nath Ganguly and Another (reported in (1986) 3 SCC 156).

11. The learned Government Pleader representing the State Governments argued that there was no sanctioned post called Awaas Bandhu. No

appointment either permanent or temporary or contractual was made in respect of Awaas Bandhus. No selection process was conducted. That

the petitioner did not have any right to be continued as a contractual worker upto the age of 60 years. That the pleadings in the writ petition did not

disclose that other Awaas Bandhus were allowed to continue in service. He further relied on the Pradhan Mantri Awaas Yojana to substantiate

that the said scheme did not provide for appointment of Awaas Bandhu. He also supported the order of the District Magistrate and Executive

Officer, Bankura Zilla Parishad, saying that the authority had considered the matter in detail and had come to a finding that the Block Development

Officer was forced to cancel the appointment of Awaas Bandhu as he realised at the meeting held on September 1, 2016 that the petitioner and

other Awaas Bandhus were not competent to carry out the additional work assigned to them.

12. Let me now consider the rival claims of the parties. From the order of the District Magistrate Bankura and Executive Officer, Bankura Zilla

Parishad dated November 22, 2015 it appears that the decision to engage Awaas Bandhu from Social Audit Volunteers was taken to monitor

supervise and collect Physical Status Report and photographs of on-going housing projects under the Indira Awaas Yojana. This decision was taken

because the beneficiaries under the project were not aware of timely

construction of the dwelling units after receipt of the instalments. It was found that the beneficiaries under the scheme were not adequately monitored or supervised and there was a need to motivate, monitor and supervise them.

It was decided that the services of these 'Awaas Bandhus' would be utilized for ensuring optimum utilization of the funds received by the

beneficiaries for the years 2012-13 to 2015-16 so that the instalments they received, would be utilized before March 31, 2016, failing which the

unspent balance instalment would have to be sent back to the Rural Development Department, Government of India. On the basis of this order the

petitioner along with other 'Awaas Bandhus' was assigned the job of monitoring and supervising the construction of houses by beneficiaries and

to ensure optimum utilization of the fund received.

13. It is clear that this assignment was an additional work given solely for the purpose as mentioned hereinabove to ensure that the beneficiaries utilized

the funds within March 31, 2016. Their engagement was for this limited purpose and for the period specified hereinabove under the IAY scheme.

There is nothing on record to show that this appointment was made by way of open advertisement, by following a proper recruitment procedure and

by issuing appointment letters. By a simple order issued by Block Development Officer, Sonamukhi Panchayat Samiti the Social Audit Volunteers

were assigned the work of 'Awaas Bandhus'. The petitioner has not produced any document to show that he had attended any interview or that

he had undergone any training.

14. Admittedly, the Social Audit Volunteers had expressed difficulty in performing the job at the meeting held on September 1, 2016 and the Block

Information Officer also found that they were not capable of doing such technical work. Thereafter, the order dated September 9, 2016, was issued by

the Block Development Officer. There is nothing on record to show that the petitioner either participated in any interview or attended any training as

submitted. Although, the petitioner wanted to build up a case of termination without being given an opportunity of being heard, yet he has not been able

to produce any documents before this Court which would show that he was appointed to a sanctioned post through a proper selection/recruitment

process. He had not even started the work. In the judgment relied upon by the petitioner Brojo Nath Ganguly and Another (supra) the subject matter

of dispute was completely different. The validity of a provision in the service rules which enabled the employer to terminate an employee with three months notice and or to terminate by payment of salary for three months in lieu of notice was under challenge. The Apex Court while considering the said rule held that permanent employees could not be terminated without a proper procedure and ought to be given a hearing and the Apex Court, had consequently, struck down the said provision of the service rules. The Apex Court deprecated this practice of hire and fire.

15. In this case the additional work as 'Awaas Bandhu' that was assigned to the petitioner along with others was taken back by cancelling the memo before they started functioning. The petitioner was neither a temporary worker nor a contractual worker against any post under the Zilla Parishad or concerned Panchayat Samiti. As the order of cancellation dated September 9, 2016 did not contain any stigma, the same cannot be said to be arbitrary or unreasonable or violative of Article 14 of the Constitution of India. It was simpliciter an order of cancellation of an engagement.

16. The issues which fall for consideration are, whether, the order dated September 9, 2016 was an order of dismissal or whether the said order was an innocuous one issued by the authority as the Social Audit Volunteers were not fit for the job, without however, making any observation in that regard in the order. An examination of the order dated September 9, 2016, is necessary to see whether the order was based on motive or foundation.

17. Reference is made to the decision in Gujarat Steel Tube vs. Gujarat Steel Tubes Mazdoor Sangh [(1980) 2 SCC 593]. A discussion on motive and foundation is necessary. In the Gujarat Steel Rules (supra), as to 'foundation' it was said by Krishna Iyer, J. As follows:

'.....a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.'

And as to motive:

On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt

but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not

dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact,

misconduct is not then the moving factor in the discharge.

18. This principle applies even in cases of termination of services of temporary workers or probationers. If an employer was not inclined to continue

with the employee who, according to the employer was not capable of rendering service, as in case of the petitioner, the order cancelling his

engagement would not be bad in law, although the motive behind the order of cancellation could have been his inability to perform the job, but, the

order was an innocuous one without a mention of his inability. Incompetence or inability or unsatisfactory performance were not the foundation for the

issuance of the order dated September 9, 2016. Moreover, when there is no stigma attached to the said order rules of natural justice would not apply.

19. In the matter of stigma reference may be made to *Samsher Singh vs. State of Punjab* reported in (1974) 2 SCC 831. Ray, CJ observed that if a

simple order of termination was passed that would enable the officer to make good in other walks of life without a stigma then the same is not

bad in law. It was also stated in *Bishan Lal Gupta vs. State of Haryana* reported in (1978) 1 SCC 202 that if the order contained a stigma, the

termination without following the procedure would be bad for the individual concerned must suffer a substantial loss of reputation which may

affect his future prospects.

20. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman vs. Pan American World Airways* reported in (1987) 1 SCC 146.

This Apex Court explained the meaning of stigma as follows:

According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark,

sign etc., indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish,

defect, disgrace, disrepute, imputation, mark of disgrace or shame. The

Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary 'stigma' is a matter for moral reproach.

21. It has been held in *State of Orissa vs. Ram Narayan Das* reported in [AIR 1961 SC 177], that the use of the word 'unsatisfactory work and conduct' in the order of termination, will not amount to stigma.

22. The Apex Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and ors.* reported in (JT 1999 (1)

SC 396) considered the above-mentioned leading decisions on the point of termination of a probationer and had come to a conclusion that when

findings of misconduct form the foundation of the order of termination the said order was bad unless regular enquiry was conducted and the employee

was given an opportunity of being heard.

23. Thus whether the petitioner's service as 'Awaas Bandhu' was a termination or dismissal from service would depend on two things.

24. First, whether he was appointed against a post even if a temporary or contractual by a proper selection procedure. Secondly, whether the order

cancelling the engagement of all 'Awaas Bandhu' by a general order, amounted to dismissal from service. Both the questions are answered in

the negative. As such, the petitioner did not ever acquire any right to the post and the order of cancellation dated September 9, 2016 is an order of

disengagement and not an order of dismissal or termination because allegation of dissatisfactory service and inability to perform the duties assigned to

him was not the foundation on which the order was passed. By a simple order the Block Development Officer, Sonamukhi Panchayat Samiti

discontinued the services of the petitioner and other 'Awaas Bandhus' by cancelling the order of engagement dated August 31, 2016, without

attaching any stigma and as such the said order was not arbitrary and had not violated the principles of natural justice.

25. The next issue for consideration is the validity and propriety of the order dated June 8, 2017 passed by the District Magistrate, Bankura and

Executive Officer, Bankura Zilla Parishad. The District Magistrate upon hearing the petitioner as also the Block Development Officer, Sonamukhi

Development Block came to a finding on the basis of records and submissions of the respective parties that the Block Development Officer had come

to a conclusion that the Social Audit Volunteers who were given the additional temporary work as 'Awaas Bandhu' were not technically trained

to execute the monitoring work assigned to them under IAY Scheme. The District Magistrate further observed that 'Awaas Bandhu' were

engaged to monitor completion of houses under the IAY and their assignment was supposed to be for a very limited purpose and very limited period

under the said project. The said IAY has been discontinued and as such in any event the assignments given to 'Awaas Bandhu' could not be

continued under the PMAY (G). The District Magistrate arrived at a conclusion upon perusal of all documents and the representation of the petitioner

dated December 22, 2016. He observed that as the petitioner was not appointed to any sanctioned post either permanent, contractual or temporary

through a proper selection process the order of cancellation of engagement was not an order of termination or dismissal from service.

26. I have considered the reasons assigned by the District Magistrate Bankura and I do not find any illegality or impropriety in the said order.

27. Although it is the case of the petitioner that the IAY and PMAY (G) were more or less similar schemes and he could have been continued under

PMAY (G), a comparative reading of the two schemes would show that the procedure for monitoring the IAY Scheme and PMAY (G) Scheme

were completely different. The process of monitoring under IAY was as follows:-

'Officers dealing with the IAY at the State headquarters should visit districts regularly and ascertain through field visits whether the programme is

being implemented satisfactorily and whether construction of houses is in accordance with the prescribed procedure. Likewise, officers at the district,

sub-division and block levels must closely monitor all aspects of the IAY through visits to work sites. A schedule of inspection which prescribes a

minimum number of field visits for each supervisory level functionary from the State level to the block level should be drawn up and strictly adhered

to. The State Government should prescribe the periodical reports/returns through which it should monitor the performance of IAY in the districts and

also get appropriate reports and returns prescribed, to be collected by the Zilla Parishads/DRDAs. The monitoring of the programme at the State level

will be the responsibility of State Level Vigilance and Monitoring Committee for Rural Development Programmes. A representative or nominee of the

Ministry of Rural Development, Government of India should invariably be invited to participate in the meetings of the Committee. The following

reports and returns should be submitted to the Government of India by the State/UTs separately in respect of the Indira Awaas Yojana (separately for new construction/upgradation):-

(i) A monthly progress report to be furnished by Telex/Fax/E-mail/Nicnet in Proforma-I (a) to 1(c), on or before 10th of every succeeding month.

(ii) A detailed Annual Progress Report to be submitted by 25th April of the succeeding financial year in Proforma-II (a) & (b).â??

28. Whereas under the PMAY (G) separate detailed chapters have been dedicated to the process of implementation, reporting and monitoring of the

progress of the scheme. It appears that most of the monitoring would be done through an end to end e-Governance model. Salient feature of the

monitoring of the said scheme is set out hereunder:-

E-GOVERNANCE IN PMAY-G

In PMAY-G, programme implementation and monitoring shall be executed through an end to end e-Governance model. There will be two systems for

e-Governance based service delivery in the scheme i.e.;

(a) The PMAY-G MIS-AwaasSoft, and

(b) The PMAY-G mobile application-AwaasApp.

AwaasSoft AwaasSoft is a web based transactional electronic service delivery platform to facilitate e-Governance in PMAY-G. The system has been

developed in house by the Rural Housing Division of Ministry of Rural Development, in collaboration with NIC. The portal is currently hosted at the

url-http://iay.nic.in. All the critical functions of PMAY-G like the identification of beneficiaries from SECC, fixing of targets, the release of funds, the

issue of sanction order to the beneficiary, the monitoring of the progress stages of the house construction by the beneficiary, and the release of the

assistance amount to the beneficiary, etc. is done through the AwaasSoft.

Mobile application : AwaasApp Mobile application â??AwaasAppâ? that captures georeferenced and time stamped photographs of the houses during

their construction has been developed. The application is designed to facilitate inspections and uploading of photographs. The geo tagged data made

that would be available â??AwaasAppâ? would be linked to the dashboard that is

proposed to be developed in future. Functionality of AwaasApp is to be increased till it is enabled to cover the entire data entry and MIS requirements.

29. Under such circumstances, the claim of the petitioner that as the two schemes were similar in nature, replacement of IAY should not be a bar to his appointment as 'Awaas Bandhu' in PMAY (G) also fails. The process of monitoring of the progress of the scheme in PMAY (G) was totally technical and specialized. There was no requirement of volunteers to do the said job.

30. The claim of the petitioner that he has a right to continue upto the age of 60 years as a contractual worker also fails. He has not produced any government order or circular in his favour. The petitioner was never appointed against a sanctioned post by a proper selection procedure as a contractual worker or temporary worker by the Panchayat Samiti and he had not been continued as a contractual worker ('Awaas Bandhu') for a continuance period of time. The purpose of assigning additional work to the petitioner, who was engaged as a Social Audit Volunteer was very limited. Before the petitioner, could start the work as 'Awaas Bandhu' a meeting was held with the petitioner and other similarly situated Social Audit Volunteers and it was decided that they would be unable to perform immediate job of monitoring construction of houses under the IAY and, as such, their order of engagement was cancelled by subsequent order without attending any stigma. The scheme has been also discontinued. The petitioner's engagement as Social Audit Volunteer has not been taken away and he may continue to discharge such duties as and when required as per the usual procedure. The allegation that similarly situated 'Awaas Bandhus' were allowed to continue under PMAY (G) is not substantiated by either pleadings or documents and as such cannot be accepted.

31. Under such circumstances, the writ petition is dismissed. No order as to costs.

32. Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.