

(1995) 07 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 3260 of 1982

A.J. Joshi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 GLR 297

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—The petitioner is a qualified Doctor and in the year 1971, he was working as Incharge Medical Officer, Sajod Primary Health Centre. That a complaint was made against him that one Shri Natvarlal, a boy aged eight years was suffering from diarrhoea and vomiting and the said boy was taken to the Primary Health Centre, Sajod, around 10-00 to 10-30 p.m. on 30th August 1971. That the petitioner did not examine the said boy-patient and instead, asked the Sanitary Inspector to give the medicines from Epidemic Store. The petitioner did not examine the patient though the relative of the patient suspected cholera and had informed the petitioner accordingly. The condition of the said boy went on deteriorating and again around 3.00 a.m. after mid-night, the petitioner was requested to visit the said boy and to examine the patient. The petitioner refused to do so and directed the Sanitary Inspector ("S.I." for short) Shri Jadav to visit the patient and to administer certain injection and medicines. The patient did not respond to the treatment and the relatives of the patient again went to the petitioner around 5-00 morning and repeated their request to visit and examine the patient. The petitioner refused to visit the patient and asked the boy the brought to the Centre. The patient aged about eight years was brought in a bullock cart to the Centre. Yet, the petitioner did not examine him immediately and as a result thereof, boy died before the petitioner could examine him. A preliminary enquiry was held by the District Health Officer and the District Health Officer (D".H.O." for short) in this enquiry recorded the statements of the

petitioner, S.I. Shri Jadav, Driver Shri Haridas Rana and Amrutlal Dula, peon and other persons. After receipt of the report of the preliminary enquiry, no enquiry was initiated against the petitioner. Later on, enquiry was entrusted to the Anti-Corruption Bureau and on the basis of the report made by the Anti-Corruption Bureau of the Police, the petitioner was served with a charge-sheet on 9th January, 1975, by the Director of Health Services (Health Section), Ahmedabad. The charge framed against the petitioner reads as under :

"On 30-8-1971, Shri Vithalbhai Laljibhai Kataria of Sajod went on to call Dr. A.J. Joshi the then Medical Officer P.H.C., Sajod, for treatment of his son Shri Natvarlal who was suffering from diarrhoea and vomiting. In spite of three calls from Shri Vithalbhai, Dr. Joshi did not turn up to visit the patient. As a result, the patient expired. Thus Dr. A.J. Joshi has shown negligence in discharging his duties as a Medical Officer which is against the expected work and conduct of a Government Servant".

Alongwith the charge-sheet, a statement of allegation was also sent which read as under :

"Shri Vithalbhai Laljibhai's son Shri Natvarlal was suffering from diarrhoea and vomiting, just on the line of cholera and was required immediate treatment on 30-8-1971. Hence, Shri Vithalbhai with his neighbour Shri Ravishankar Masukhbhai Sharma went to call the Doctor Shri A.J. Joshi Ex-Medical Officer. P.H.C., Sajod during night time. Shri Vithalbhai went to Dr. Joshi thrice during night time. As the patient was becoming serious, but Dr. Joshi did not care to visit the patient personally and did not take cognisance of the seriousness of the patient. As a result of his utter negligence in performance of his duties, the patient expired."

2. The petitioner was subject to the enquiry on the aforesaid charge and the allegation by the Special Officer for Departmental Enquiries (Gazetted Officers), Gandhinagar and the said Special Officer submitted his report on 29th August, 1979 holding that though the petitioner was called to visit the patient again and again, he did not go but it is not proved that the patient died on account of negligence on the part of the petitioner and that the charge of not visiting the patient was only partially proved against the petitioner. Aforesaid report was accepted by the Disciplinary Authority and the respondent-State by its order dated March 28, 1980, inflicted punishment of stoppage of one increment with future effect. The petitioner preferred review application before the Governor of the State of Gujarat and the Review Application was rejected as per the Memo dated 25th February, 1981, copy whereof has been placed on record as Annexure - D. At that time, the petitioner was on deputation to All India Institute of Hygiene and Public Health at Calcutta. The petitioner, therefore, says that he received copy of the above memo Annexure - D of 25th February, 1981, in first week of May, 1981. The petitioner being aggrieved from the order dated 28th March, 1980 Annexure - B and the memo dated 25th February, 1981 whereby his review has been rejected by the Governor of the State of Gujarat, preferred his

petition before this Court.

3. On behalf of the petitioner, it is contented that the Inquiry Officer had held that it was not proved that the patient died on account of negligence on the part of the petitioner and the charge of not visiting the patient is only partially proved and, therefore, punishment of stoppage of one grade increment with cumulative effect is unduly harsh and excessive.

4. A finding of fact has been recorded by the Inquiry Officer that the petitioner did not attended the patient despite repeated requests and the charge of not visiting the patient was partially proved against the petitioner. Such a finding of fact recorded by the Inquiry Officer cannot be interfered with in a petition under Art. 226 of the Constitution of India in the Writ of Certiorari unless there is any error apparent on the face of record. No error apparent on the face of record has been pointed out. Besides this, it is a very serious matter in which the petitioner who was in the noble profession as a Doctor did not take due and immediate care despite repeated requests and in such circumstances, even if the charge is partially proved, this Court cannot interfere with the question of punishment if the respondents have considered the punishment of stoppage of one grade increment with future effect to be adequate. This Court cannot interfere with the question of quantum of punishment unless it is shockingly disproportionate to the element of misconduct proved. In my considered opinion, it cannot be said to be a case in which punishment imposed upon the petitioner herein is shockingly disproportionate to the element of misconduct. On the contrary, the petitioner should thank his stars that a lenient view has been taken in such a serious matter and he has been visited with the penalty of stoppage of one grade increment with future effect only and at the time of filing of the petition, he had reached to the post of Additional District Health Officer. There is no substance in this petition and it requires to be dismissed. Same is hereby dismissed. Rule discharged. No order as to costs.