

(2011) 01 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 504 of 2011

Chhayaben Sureshchandra Arya

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 01 GUJ CK 0044

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : P.H. Pathak, for the Appellant; K.P. Rawal, learned Asst. Government Pleader for Respondent Nos. 1 and 2, for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Mr. K.P. Rawal, learned Assistant Government Pleader, waives service of notice of Rule for Respondents Nos. 1 and 2. Though Respondent No. 3 is served, none appears for him.

2. This petition under Article 226 of the Constitution of India, has been filed with the following prayers:

A. This Hon"ble Court be pleased to issue an order, writ in the nature of mandamus and/or Certiorary or other appropriate writ, order or direction, declaring the impugned order of transferring the Petitioner from Sojitra to Limdi and the decision of the Respondent No. 2 rejecting the representation of the Petitioner, as illegal, unjust, arbitrary, non-application of mind and be pleased to quash and set aside the same and direct the Respondent to continue the Petitioner at Sojitra.

B. Pending admission and final disposal of the petition be pleased to suspend further implementation and operation of the order of transfer from at Ann-A and the decision of the Respondent No. 2 at Annx-E/1 and direct the Respondent to allow the Petitioner to continue and discharge her duties at Sojitra.

Be pleased to direct the Respondent No. 2 to allow the Petitioner to resume her

duties at Sojitra as if no order of such transfer was issued to her.

Any other relief which this Hon"ble Court deems fit and proper in interest of justice.

3. Briefly stated, the case of the Petitioner is that she was appointed as Staff Nurse (Class-III) under Respondent No. 1 on 14-6-1989 and posted at Health Center, Bhachav. The Petitioner was transferred from Bhachav to Savali and from Savali to Civil Hospital, Vadodara. That from Vadodara she was transferred to Sojitra and, thereafter, transferred to Jamnagar. On representation, she was transferred to Sojitra. She was again transferred from Sojitra to Dharmaj in the year 2000. That after two and half years of service, she was transferred from Dharmaj to Sojitra and since 10-10-2003, she is posted as Staff Nurse at Sojitra. The Petitioner came to be transferred by order dated 18-12-2010 to General Hospital, Limdi, District-Surendranagar. Aggrieved thereby, the Petitioner filed Special Civil Application No. 16503 of 2010. In the said petition, the Petitioner had made various allegations regarding Respondent No. 3. It was also stated by the learned advocate for the Petitioner that the Petitioner had filed representation dated 24-12-2010 to the Director, Medical Services. The learned advocate for the Petitioner in that petition had prayed for permission to file a fresh representation to Respondent No. 1 i.e. Secretary, Health and Medical Services, in order to voice her grievances, keeping in view the allegations made in the petition regarding Respondent No. 3. By order dated 24-12-2010, the above-mentioned petition was disposed of, permitting the Petitioner to make a representation to Respondent No. 1. It was further directed that Respondent No. 1 shall consider and decide the same by passing a reasoned order on or before 3-1-2011, keeping in view the nature of the case. The Petitioner is aggrieved by decision dated 3-1-2011 upon her representation by the Commissioner, Commissionerate of Medical Services, whereby the said representation has been rejected. Hence, the petition.

4. Mr. P.H. Pathak, learned advocate for the Petitioner has submitted that, it has been the case of the Petitioner through-out that her transfer has been effected at the behest of Respondent No. 3 (Dr. Dalpatbhai J. Parmar, Medical Officer, Community Health Center, Sojitra, Dist. An and) in a malafide manner as the Petitioner is one of the witnesses in Criminal Case No. 540 of 2002 filed against the said Respondent. That Respondent No. 3 is pressurising the Petitioner not to appear before the Criminal Court but as the Petitioner has not succumbed to such pressure, she is being continuously harassed by Respondent No. 3. It is further submitted that taking into consideration the allegations made by the Petitioner in the earlier petition filed by her, this Court, by order dated 24-12-2010, passed in Special Civil Application No. 16503 of 2010, had permitted the Petitioner to file a fresh representation to Respondent No. 1. Though the Petitioner has made the representation to Respondent No. 1, as is evident from the copy of the same annexed as Annexure "D" to the petition, Respondent No. 1 has not decided the representation; instead, the

representation has been decided by the Commissioner of Health, Medical Services, and Medical Education. It is vehemently contended by the learned advocate for the Petitioner that in the impugned order dated 3-1-2011, whereby the representation has been rejected, there is not a whisper regarding the specific allegations of malafides made by the Petitioner against Respondent No. 3. The said decision is merely a narration of the representations made by the Petitioner and letter of Respondent No. 3, and the only ground on which the representation has been rejected is that the transfer of the Petitioner has been effected due to administrative reasons. However, the aspect of malafides on the part of Respondent No. 3 has not been touched upon at all in the said order. The learned advocate for the Petitioner has emphasised that the order of the Court has not been implemented in its true letter and spirit by the Respondents, therefore, the same deserves to be quashed and set aside. Lastly, it is submitted that the Court has issued notice in the petition on 19-1-2011. The Petitioner has served Respondent No. 3 on 21-1-2011, and the said Respondent has promptly relieved the Petitioner on 22-1-2011. However, Respondent No. 3 has not appeared before this Court today, in spite of having been served. It is strongly contended that this behavior on the part of Respondent No. 3 fortifies the allegations of malafides made by the Petitioner.

5. Mr. K.P. Rawal, learned Assistant Government Pleader has sought instructions from Shri L.K. Ninama, Administrative Officer, Health & Medical & Nursing Branch and Shri J.R. Patel, Office Superintendent, who are present in the Court today. Even after consultations with the above-mentioned Officials, the learned Assistant Government Pleader is not in a position to satisfy the Court as to why the Commissioner has decided the representation, when the Court had specifically directed the Secretary to decide the same. Moreover, the learned Assistant Government Pleader is not in a position to give any satisfactory reply why the representation has been decided by an unreasoned order, without taking into account the specific allegations made by the Petitioner against Respondent No. 3 especially when the Court has clearly directed that it should be decided by a reasoned order. The learned Assistant Government Pleader has merely submitted that the representation of the Petitioner has been rejected, as the transfer of the Petitioner has been made on administrative grounds. This submission is irrelevant on the facts and in the circumstances of the case as discussed herein-above, in light of the order of this Court dated 24-12-2010.

6. It is not disputed that the Petitioner has made specific allegations of malafide against Respondent No. 3 in Special Civil Application No. 16503 of 2010, alleging that her transfer has been effected as she is named as a witness in Criminal Case No. 540 of 2002 filed against the said Respondent. It is specifically averred that Respondent No. 3 is pressuring the Petitioner not to appear as witness against him in the criminal case, and for this reason he is harassing the Petitioner by filing false complaints and reports against her, and has recommended that she be transferred. It is also averred that Respondent No. 2 (Director) has acted upon the reports submitted by Respondent No. 3, ignoring the settled principles of

general transfer and, as a result, the Petitioner has been transferred outside the district. By the order of this Court dated 24-12-2010 disposing of the said petition, the Petitioner has been permitted to file a fresh representation to Respondent No. 1, in order to voice her grievances, keeping in view the allegations made against Respondent No. 3. This has been done as, in the view of this Court, Respondent No. 1 being Secretary, is a senior and responsible officer who would be in a position to look into the matter impartially and dispassionately and take an appropriate decision. To this end, it has been specifically directed that the representation is to be decided by Respondent No. 1 by passing a reasoned order. However, in spite of the above-mentioned directions the representation made by the Petitioner which contains the same allegations against Respondent No. 3, has not been decided by the Secretary. Instead, it has been decided by the Commissioner, who was never directed to do so. There is no explanation from the learned Assistant Government Pleader why this has been done. Moreover, the Commissioner has decided the representation without even remotely touching upon the aspect of malafides that have been clearly alleged in the representation by the Petitioner.

7. Though it is a settled position of law that the Court would not lightly interfere in an order of transfer purportedly passed in the exigencies of administration however, the Supreme Court, in a catena of decisions has stated that where malafides have been specifically alleged, the interference of the Court is not precluded.

8. In the present case, in spite of allegations of malafides, this Court had not interfered in the earlier petition but had permitted the Petitioner to make a representation to Respondent No. 1, in the first instance, with a view to see that Respondent No. 1 would look into the grievances of the Petitioner and the allegations of malafide against Respondent No. 3. However, it is found that the order of the Court has not been obeyed in its letter and spirit. Respondent No. 1 has not decided the representation. The Commissioner, who was never directed to do so has decided the same, but the order passed by him does not contain even a whisper regarding the allegations made by the Petitioner. As such, it cannot be said to be a reasoned order.

9. The Court is constrained to take note of another unfortunate aspect. Immediately after service of notice upon Respondent No. 3 on 21-1-2011, the said Respondent has promptly proceeded to relieve the Petitioner on 22.1.2011. However, despite service of notice, Respondent No. 3 has not put in an appearance before this Court, till today. The learned advocate for the Petitioner has stated that the affidavit of direct service has been filed in the Registry. The record of the case shows that Respondent No. 3 has been served. Such acts of omission and commission of Respondent No. 3 do raise certain questions.

10. On the above facts and in the circumstances as detailed hereinabove, as the Commissioner who has passed the impugned order dated 3-1-2011, is not the authority directed by the Court to decide the representation, and as the

representation has been decided by an unreasoned order, without any decision regarding the allegations made by the Petitioner against Respondent No. 3, the said order is not sustainable in law, therefore, deserves to be quashed and set aside.

11. Accordingly, the petition is partly-allowed. The impugned order dated 3-1-2011 is quashed and set aside. All consequential orders passed by the Respondent authorities, including Respondent No. 3, during the pendency of this petition, are also quashed and set aside. Needless to say that the representation shall be decided by the Secretary by passing a reasoned order, dealing with all aspects stated therein. It is open to the Secretary, to give the parties an opportunity of hearing, if found necessary.

12. It is clarified that while passing this order the Court has not entered into the merits of the case.

13. Rule is made absolute, to the above extent. There shall be no orders as to costs.

14. Direct service of this order is permitted.