
(2013) 05 RAJ CK 0161

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 215 of 2013

Dr. Ganpat Ram Kaler

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : (2013) 3 WLN 101

Hon'ble Judges : Amitava Roy, C.J.;Arun Bhansali, J

Bench : Division Bench

Advocate : Sandeep Shah, for the Appellant; G.R. Punia, Additional Advocate General with Mr. Mahendra Choudhary for the State-Respondents No. 1 and 2, Mr. Vikas Birjania, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The order dt. 13.05.2013 passed under Article 226(3) of the Constitution of India thereby vacating the interim restraint dt. 18.4.2013 hitherto suspending the operation of the orders dt. 10.4.2013 and 11.4.2013 posting the respondent No. 3 as Chief Medical and Health Officer, Nagaur and releasing the appellant therefrom to continue as Senior Medical Officer, Community Health Centre, Kuchera, is in assailment. We have heard Mr. Sandeep Shah, learned counsel for the appellant, Mr. G.R. Punia, Additional Advocate General for the State-respondents No. 1 and 2 and Mr. Vikas Birjania, learned counsel for the respondent No. 3.

2. The run up of facts leading to the filing of the instant appeal is that the appellant was appointed as Medical Officer on 21.6.1984 in the Medical & Health Department of the State and was, thereafter, promoted as Senior Medical Officer vide order dt. 28.8.2004 against the vacancy thereof of the year 2000-2001 on the recommendation of the Departmental Promotion Committee constituted under the Rajasthan Medical & Health Service Rules, 1963 (for short, hereafter referred to as "the Rules"). While the appellant was posted as Senior Medical

Officer, Community Health Centre, Kuchera, Dr. Ratan Kumar Meena, Chief Medical & Health Officer, Nagaur was placed under awaiting posting order on 12.2.2013 and he was directed to hand over the charge of the said office to the appellant. Pursuant to the order dt. 12.2.2013, as aforementioned, the appellant took over charge of the Chief Medical & Health Officer, Nagaur on the very same day and started functioning as such. According to the appellant, at all relevant times, there had been a complete ban on transfer of Government employees. Be that as it may, Dr. Ratan Kumar Meena by order dt. 13.2.2013 was posted as Chief Medical & Health Officer, Alwar against a vacant post. At that point of time, as the appellant has averred, the respondent No. 3 Dr. Ashok Kumar Yadav, who is about seven years" junior to the appellant in service, was posted as Senior Medical Officer, Mundwa (Nagaur).

3. While the matter rested at that, the appellant in the capacity of Chief Medical & Health Officer, Nagaur and pursuant to the order dt. 20.03.2013 of the Assistant Secretary, Medical & Health (Group-II) Department, Rajasthan, Jaipur, by order passed on 04.04.2013 required the respondent No. 3 to hand over charge of his office of the Block Chief Medical Officer, Mundwa (Nagaur) to the senior-most Senior Medical Officer and to report to his (appellant) office. The respondent No. 3 accordingly on 08.04.2013 reported at the office of the Chief Medical & Health Officer, Nagaur. On 10.04.2013, however, by the impugned order of the even date, the respondent No. 3 was posted as Chief Medical and Health Officer, Nagaur. The order indicated mat he was thereby posted against a vacant post of Chief Medical & Health Officer, Nagaur. On the next day i.e. 11.04.2013, the respondent No. 3 relieved the appellant from the charge of the office of the Chief Medical & Health Officer, Nagaur with a direction to continue as Senior Medical Officer, Community Health Centre, Kuchera. Being aggrieved, the appellant has invoked writ jurisdiction of this Court for its remedial intervention.

4. This Court by order dt. 18.4.2013 while issuing notices, in the interregnum, suspended the operation of the impugned orders dt. 10.04.2013 and 11.04.2013. The respondents on receipt of the notices of the writ proceedings, entered appearance, filed their reply and also sought for vacation of the interim order under Article 226(3) of the Constitution of India. The essence of their stand by filtering out the unnecessary details, is that the impugned arrangement has been made in administrative exigencies. By the order impugned as aforementioned, the interim order dt. 18.04.2013 has been vacated.

5. Mr. Shah has emphatically urged that the impugned orders are bereft of any administrative exigency and being patently arbitrary in nature and content, the learned Single Judge ought not to have vacated the interim restraint. As the respondent No. 3 is admittedly junior to the appellant in service, he could not have been posted as the Chief Medical & Health Officer, Nagaur by displacing him (appellant) therefrom, he urged. Mr. Shah insisted that the impugned arrangement, if allowed to continue, would eventuate a situation where a junior in service is allowed to hold a higher post compared to a senior incumbent. This,

according to the learned counsel, is impermissible. As in terms of the Rules, the respondent No. 3 is ineligible thereunder to be promoted as Chief Medical & Health Officer, the impugned decisions are, on the face of the records, in violation thereof (Rules) and thus, liable to be adjudged as illegal, null and void, he argued. Mr. Shah in support of his pleas placed reliance on the decision of the Single Bench of this Court in *Devi Singh Bhati vs. State of Rajasthan & Ors.* (S.B. Civil Writ Petition No. 10286/2010 decided on 19.04.2011).

6. Mr. Punia, learned Additional Advocate General, however, urged that transfer being an incidence of service, no incumbent has a vested right to hold on to a particular post and thus, the impugned orders having been passed in administrative necessity, the learned Single Judge was perfectly justified in vacating the interim restraint. He pleaded that the aspect of seniority, as contended by the appellant, is wholly irrelevant as even before the posting of the respondent No. 3 as Chief Medical & Health Officer, Nagaur, he was functioning as Block Chief Medical Officer, Mundwa, a post with higher responsibilities compared to that of Senior Medical Officer to which the appellant had been substantively appointed. As the appellant admittedly had only been given the charge of the post of the Chief Medical & Health Officer, Nagaur at all relevant times, the official respondents having posted the respondent No. 3 in the said office in institutional necessity, his (appellant) challenge is misconceived.

7. The pleadings of the parties with the documents on the record to the extent necessary for the purpose of the limited scrutiny in the instant appeal have been duly examined. The arguments advanced have also been analyzed.

8. That the substantive appointment of the appellant had been as Senior Medical Officer, Community Health Centre, Kuchera at the time when he was made to hold the charge of the Chief Medical & Health Officer, Nagaur vide order dt. 12.02.2013 is not in dispute. This assignment was thus in addition to his substantive appointment as Senior Medical Officer, Community Health Centre, Kuchera. It is not the case of the appellant that he had been posted as Chief Medical & Health Officer, Nagaur on promotion under the Rules. According to the respondents, the respondent No. 3 at the time of passing of the impugned order dt. 10.04.2013 was functioning as Block Chief Medical Officer, Mundwa, incharge of three Community Health Centres thereat including the Community Health Centre, Kuchera in which the appellant was posted as Senior Medical Officer in substantive capacity. The vacancy that occurred on the transfer of Dr. Ratan Kumar Meena from the post of the Chief Medical & Health Officer, Nagaur consequently was manned temporarily by giving the charge thereof to the appellant. His posting thereat was not in substantive capacity. The learned Single Judge, as the impugned order would reveal, felt inclined to vacate the interim restraint on the ground that in view of the posting of the respondent No. 3 as Chief Medical & Health Officer, Nagaur on administrative exigencies, the appellant by pleading incompetence of the respondent No. 3 to hold the said post, cannot claim any right to continue in the same as it was held by him by way of a

stopgap arrangement. In the attendant facts and circumstances, having regard to the scope of scrutiny in this intra-Court appeal, we do not feel persuaded to differ from this view. We refrain from making any further observation being conscious of the fact that the writ petition is pending for final adjudication. Suffice it to mention that we do not find any merit in the instant appeal. The decision in *Devi Singh Bhati* (supra) is distinguishable on facts as it was held in that case that the impugned transfer of respondent No. 3 therein, a junior officer, had been to effectuate his desire to hold the higher post to which he had been transferred.

The appeal is thus dismissed.