
(1989) 07 GUJ CK 0017
In the Gujarat High Court

Dr. Jayesh Vasudevnbhai Trivedi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-07-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 226, 226

Citation : (1990) 1 GLR 278

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Judgement

P.M. Chauhan, J.—Petitioner, an Assistant Professor in Medicine, working in Intensive Coronary Care Unit (hereinafter referred to as ICCU), Institute of Cardiology, Civil Hospital, Ahmedabad, has challenged the transfer as the Assistant Professor Medicine, M.P. Shah Medical College, Jamnagar, by Government by order dated April 11, 1989 and the order dated April 12, 1989 relieving him to join the new assignment in M.P. Shah Medical College, Jamnagar, on various grounds viz., that the petitioner having been appointed as the Asstt. Professor, Cardiology Unit, cannot be transferred as Asstt. Professor of Medicine, to the institution having no Cardiology Unit; that by transfer the prospects for the promotion as Associate Professor would be affected, that the transfer is mala fide and that he would be caused personal inconvenience as his wife is to appear for the M.D. Examination and the climate at Jamnagar will not suit his old parents.

2. The petitioner was appointed as the Assistant Professor in the subject of Medicine, on purely ad hoc basis for the period of one year or till the post was filled in on regular basis or till further orders which ever was earlier, by order of Government dated October 3, 1985 (Annex. "C") and was posted at Medical College, Surat. According to the petitioner, he was transferred on deputation at the Institute of Cardiology, but according to the respondents the petitioner was transferred from Medical College, Surat to Ahmedabad and was posted at ICCU but not in the Institute of Cardiology. On the recommendations by the Gujarat

Public Service Commission, the petitioner was appointed as the Asstt. Professor in Medicine which post he was holding on ad hoc basis, by order dated January 8, 1987 (Annexure "D") on probation for a period of two years and was posted at Cardiology Institute, Ahmedabad. On satisfactory completion of the probation period as the Assistant Professor in Medicine, B. J. Medical College, Ahmedabad, the petitioner was continued on the long term basis by the Government by order dated January 5, 1988 (Annexure "E"). According to the petitioner, as contended in the petition, he is holding the degree of M.D. i.e. Doctor of Medicine and was appointed as Asstt. Professor and is working in ICCU Department Civil Hospital, Ahmedabad. The petitioner also contended that he was working as Clinical Assistant in the Cardiology Department at Civil Hospital, Ahmedabad, during the probation period and was considered for appointment as Asstt. Professor on October 3, 1985 as his work was considered satisfactory and skillful and even though he was appointed at Medical College, Surat, he was transferred on deputation at the Institute of Cardiology and continued on deputation though he was transferred on October 9, 1985 to Medical College, Jamnagar. He has also contended that he is having experience as a Cardiology and has specialized in Cardiology and has published research work and paper in Cardiology, the details of which are given in Bio-data (Annexure "F"). According to the petitioner, he was considered as a Cardiologist during the visits of the dignitaries, like the Prime Minister, President or the Vice President of India. The petitioner at the initial stage contended that his appointment is as Asstt. Professor in Medicine (ICCU) and he is specially appointed for ICCU, but subsequently by amendment, in newly added paragraph 5.5, the petitioner contended that his appointment is in the Institute of Cardiology, Civil Hospital, Ahmedabad, and cannot be transferred to non-ICCU Department and his transfer to general Medicine Department is unjust, illegal and not proper.

3. The respondents while controverting the contentions of the petitioner by Affidavit-in-reply by Dr. R.C. Shah, Deputy Director, Medical Education and Research, stated that the petitioner was working as Asstt. Professor of Medicine, B.J. Medical College, Ahmedabad and was posted at ICCU in the Institute of Cardiology and that the petitioner was all through out appointed and working as Asstt. Professor of Medicine. The petitioner was transferred from Government Medical College, Surat on deputation to Ahmedabad and was posted at ICCU but not in the Institute of Cardiology. At that time, out of 4 posts of Asstt. Professor, Cardiology, only one post was filled in as the Court had stayed the filling of three posts and therefore, the petitioner was posted in ICCU but not in the Institute of Cardiology. It is also stated that the petitioner is not specialised in Cardiology but holds the degree of M.D. in general Medicine. Cardiology is a separate and distinct branch, and the petitioner has neither any qualification nor super speciality in Cardiology nor any experience as an Asstt. Professor of Cardiology. The petitioner was never considered as Cardiology at any time much less during the visits of dignitaries. For the post of Asstt. Professor of Cardiology the requisite qualification is D.M. (Cardiology) and M.D. (General Medicine) and the

petitioner possess the degree of M.D. (General Medicine) only and not D.M. (Cardiology). The petitioner was posted at ICCU and was not appointed in ICCU as contended by the petitioner.

4. Apart from the deposition in affidavit of Dr. R.C. Shah, Deputy Director, Medical Education and Research, it is clear from the appointment order referred to above that the petitioner was appointed as Asstt. Professor in Medicine and was never appointed as Asstt. Professor of Cardiology. Mere posting at the Institute of Cardiology by itself does not mean that the petitioner was ever appointed as Asstt. Professor of Cardiology. For want of specialized person, the posting may be done to man the vacancy by person having no requisite qualifications, but that does not necessarily mean that the person who is posted is appointed to that particular post. The appointment to the particular post and the posting to a particular post are two distinct things. If the specific order for appointment to particular category of post is made, the incumbent can be said to be holding that particular category of post but in case the specific appointment is not made for the particular category of post and posting is made to man a particular post, the incumbent so posted on that particular post cannot claim to be appointed to that particular post or category of post. The petitioner was appointed as Asstt. Professor in Medicine and was never appointed as the Asstt. Professor of Cardiology and therefore, his posting either at the ICCU or in the Institute of Cardiology would not entitle him to claim that he is appointed as Assistant Professor of Cardiology or to assert the right to hold the post of Assistant Professor of Cardiology with the Institute of Cardiology or ICCU. It is also evident that the petitioner even though might be working at the ICCU for more than 3 years, does not hold the requisite qualifications for the post of Asstt. Professor of Cardiology. The petitioner, therefore, cannot assert his posting only at the institute having cardiac unit or ICCU. The transfer as Asstt. Professor in Medicine at M.P. Shah Medical College, Jamnagar is therefore, not invalid or illegal.

5. The apprehension of the petitioner that by transfer his chances for the promotion as Associate Professor would be affected, does not appear to be well founded. The contention of the petitioner is that he is appointed as Asstt. Professor and has specialized in Cardiology and heart disease at Civil Hospital ICCU Department, Ahmedabad and he is the most senior qualified experienced Asstt. Professor who is also due for promotion as Associate Professor and because of the transfer he will not be considered for the post of Associate Professor for which he is legally entitled having experience of more than five years for carrying out special investigation at ICCU Department. Dr. Shah has categorically controverted this contention stating that petitioner is not specialized in Cardiology since he has not acquired D.M. (Cardiology) qualification; not got training from any recognised institution and does not possess requisite experience of three years as Asstt. Professor of Cardiology and is not the senior most qualified and experienced Asstt. Professor as he stands at Sr. No. 13 in the Seniority List of Asstt. Professors of Medicine, the post which the petitioner is

holding and that by transfer the rights of the petitioner as an Asstt. Professor also not affected and the seniority will not be changed. It is apparent that the seniority of the petitioner will never be affected by the transfer. The promotional avenues of the petitioner are therefore, not affected and that should not be considered as the ground for setting aside the transfer order.

6. The law on the point of transfer is now well settled that the transfer is an incident of service and Government servants or employees of the public undertakings holding the transferable posts, are supposed to carry out the transfer order and take charge at the place of transfer and cannot insist for the particular place of transfer. If at all any such Government servant or the employee has personal reasons or is likely to be caused inconvenience by the transfer, the remedy is by way of representation to the transferring authority but except the mala fide or similar such grounds are established, the transfer order cannot be set aside by the Court. The Supreme Court in *Shanti Kumari v. Regional Deputy Director Health Services, Patna and Ors.* AIR 1981 SC 1577 has laid down a general proposition of law that transfer of a Government servant may be due to exigencies of service or due to administrative reason, the Courts cannot interfere in such matters. Similar view is reiterated by the Supreme Court in *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*,

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to make representation to the competent authority, for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case....

7. This Court in the case of *J.K. Dave v. State of Gujarat and Ors.* 30 (1) GLR 571 has expressed the similar view.

8. The law on the transfer being now well settled the Court while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India should not interfere in the order of transfer only can be general grounds like inconvenience, not disturbing other similarly situated incumbents, financial loss, suitability of the place etc. The Court should however, consider the ground of

mala fide as any mala fide action is antithesis to the constitutional guarantee of equality and protection enshrined in Article 14 of the Constitution of India. It may be very easy to allege mala fide in most of the cases and therefore, till the Court is convinced about the mala fide action for transferring the concerned incumbent, the transfer order cannot be set aside. The mala fide should be such that it would vitiate the transfer order. The Division Bench of this Court while considering the allegations of mala fide for assailing the order of transfer, in *Taraguri Kalyanji Khimani v. District Panchayat, Jamnagar* and Anr. 1984 GLH 589 observed:

Any subordinate Civil Court merely because a suit is filed alleging that there is mala fides in the transfer would not be justified in passing an interim order staying the transfer even if there is a plea mala fides remembering that mala fides succeed very rarely and it is not easy to make out successfully the case of mala fides. The Courts should be aware that it is not to take any and every statement of mala fides deserving of notice for grant of interim relief.

In the instant case the petitioner has alleged mala fides against Dr. T.K. Patel, Director of Institute of Cardiology, contending that Dr. Patel, has great influence with the Government and he does not attend the cardiac unit regularly but attends only for few hours and that too on alternative days and he never allows to any young Asstt. Professor to come up and has sacrificed the career of so many young Asstt. Professors who had to leave the institution. It is also alleged that the transfer order is made with a view to accommodate Dr. S.H. Mehta who is only a Surgeon and not a Cardiologist. The petitioner at the initial stage contended that Dr. T.K. Patel holding the additional charge of ICCU over and above his charge of General Medicine Unit-I and who is designated as Director of Institute of Cardiology, has in past, during his charge victimised the career of more than 10 Asstt. Professors, as the Asstt. Professor who completes three years of service as Asstt. Professor has to be considered for the post of Associate Professor and the in-charge has to hand over the charge of ICCU to the Associate Professor, and Dr. Patel was never inclined to hand over charge to such Associate Professor. By amendment, the petitioner specifically mentioned the names of the Doctors who are alleged to have been victimised or harassed by Dr. Patel. It is also stated that Dr. Patel has threatened the petitioner that he has influence in the Government and can get any person transferred or get the services of any person terminated, who may be obstacle in his way. It is alleged that Dr. Patel does not allow to operate the machineries and equipment of different types in the Cardiology Department and when the petitioner protested, he was told by Dr. Patel that the petitioner would not be allowed to continue in the institute. Dr. Shah has in his Affidavit dated June 22, 1989 clearly refuted these contentions of the petitioner and has stated that the Doctors who are alleged to have left the services because of the victimisation, have left the department either for joining other service or for private practice and one of them is even at present working as an Assistant Professor in Medicine in B.J. Medical College, Ahmedabad and another is working as Assistant Professor of Cardiology at the Institute of

Cardiology. Dr. Shah has categorically denied the allegations of harassment, torture and victimisation. Dr. T.K. Patel is already recognized as a post-Graduate Teacher in the super specialized subject of Cardiology for training the students for M.D. (Cardiology) by the Gujarat University since July 12, 1984. Such vague and general allegations about mala fides should not be accepted, as it is very easy to make such wild allegations for assailing the order of transfer. It is clear that the transfer order is issued by the Government and not by the Director and it cannot be accepted that the Government can be easily influenced by Dr. Patel, as alleged, for transferring the petitioner to Jamnagar. It is alleged that the transfer order was sent to the Minister immediately after it was passed but that by itself cannot be the ground for smacking any mala fide as it is clear that the Government has passed the order for transfer.

9. The petitioner by an amendment in the petition stated that Dr. Sukumar H. Mehta, son of member of Parliament, after joining the Medical College at Jamnagar for couple of days got transferred at ICCU Ahmedabad and the Department of Jamnagar was forced to be closed. The petitioner submitted that ICCU being the "Intensive Coronary Care Unit" requires the Doctor of Medicine and not Surgeon for that unit and thus, with a view to favour Dr. Sukumar Mehta, the petitioner is being transferred to Jamnagar. This allegation appears to be the effort of the petitioner to invalidate the order of transfer on the basis of such irrelevant ground. As stated above, allegations of mala fides are required to be established and that to with cogent and convincing evidence and mere vague allegations would not be sufficient to strike down the order of transfer. The allegations are clearly controverted by Dr. Shah stating that Dr. Sukumar Mehta has secured admission at K.E.M. Hospital Bombay for the study in Super Speciality of Cardio Vascular and Thoracic Surgery on his own merits and obtained degree of M.C.H. which is a super special degree in its own field. Dr. Mehta is a Super Specialist Cardiac Surgeon, who can perform a close heart surgery, while the petitioner is a General Physician. The presence of Dr. Mehta in the Institute since September 26, 1987 upto April 12, 1989 has never affected the career of the petitioner. He has categorically stated that it is really surprising that a simple order of transfer effected because of exigencies of service, is challenged by making allegations against a Doctor who is not concerned with the case of the petitioner.

10. In view of these specific averments of Dr. Shah the contention of the petitioner that with a view to favour Dr. Sukumar Mehta the petitioner is being transferred to Jamnagar deserves to be mentioned only with a view to repeal and discard it. It is thus to be noted that the allegations are made against Director Dr. Patel and not against the Government for transferring the petitioner to Jamnagar. The transferring authority is Government and not the Director Dr. T.K. Patel. It cannot be easily stated that Dr. Patel wielded such influence upon the Government that the Government succumbed to his influence to transfer the petitioner to Jamnagar. The transfer order of the petitioner therefore, cannot be set aside on the alleged ground of mala fides.

11. The petitioner asserted personal inconveniences that his wife is to appear for the M. D. Examination and that the climate at Jamnagar would not suit to the old parents of the petitioner, but such personal inconveniences, even if true, cannot be the basis for striking down the transfer order by the Court. In all transfer cases some inconvenience is bound to exist but in case the transfer is in the interest of public administration, such personal inconvenience should not be the acceptable ground for setting aside the transfer order. It may be the ground for representation to the competent authority and the transferring authority may consider such grounds, but the Court should not interfere in the transfer order on the ground of such personal inconvenience. If the Court interferes on the ground of such personal inconvenience then the transfer of the Government servants or employees of the Public Undertakings will be practically impossible and the public administration would come to grinding halt and irreparable loss or inconvenience would be caused to it. The Court has to consider whether the transfer order is passed mala fide or is arbitrary on cogent and convincing evidence and the reasons.

12. For all these reasons, in the instant case, I see no reason to interfere with the transfer order. This petition is accordingly dismissed. Rule discharged. No order as to costs.