
(1990) 12 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5511 of 1990

Dr. (Mrs.) Tara Mathur

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-12-1990

Acts Referred:

Citation : (1990) 2 RLW 316 : (1990) 2 WLN 258

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—The petitioner has challenged the Order dated 29th October 1990 under which she has been transferred from Medical College, Jaipur to Medical College, Udaipur vide respondent No. 3 Dr. Anju Tali. The challenge to the aforesaid transfer is primarily on the ground that it is as a result of the pressure exerted on respondent No. 2 Shri Lalit Kishore Chaturvedi, Minister for Health that the transfer of the petitioner has been made to accommodate respondent No. 3 Dr Anju Tali and as such it is not for the administrative exigency or reasons but has been made in colourable exercise of powers.

2. Some facts which appear from the pleadings of the parties can no longer be said to be disputed and they are these.

3. The petitioner Dr. (Mrs.) Tara Mathur is one of the senior most Professors in Gynaecology and Obstetrics and it appears that her name appears at serial No. 3 in the seniority list of Professors in Gynaecology and Obstetrics. After having been appointed as C.A.S. in the year 1966, she was promoted as Lecturer and ultimately as Professor and so far as the post of Professor is concerned, it was in the year 1982 that she was regularly promoted through D.P.C. and she has continued as such on the post. While she was working as such at Udaipur, her husband Shri Harish Chandra Mathur was also. posted in the then Rajasthan Agriculture University, Udaipur. It appears that her husband was suffering from

Nasal Cancer intracranial extension (extra cranial extension) and in the year 1987, the petitioner made representation to the Government that better medical facilities were available at S.M.S Hospital, Jaipur and that apart her husband can get special treatment from Delhi as and when urgently required. It may be stated that the husband of the petitioner was posted as aforesaid in Rajasthan Agriculture University and as a result of the ailment he was posted as Professor of Horticulture at Durgapura Research Institute and the efforts of the petitioner to get herself transferred to Jaipur could only succeed some time in the month of August 1988 and the petitioner was posted at Jaipur as Professor in Gynaecology & Obstetrics at S.M.S Hospital, Jaipur vide order dated 5th August 1988 and continued as such since then and was working as Professor Incharge, Mahila Chikitsalaya, Sahganeri Gate, Jaipur.

4. The respondent No. 3 originally was a Mohammadon and she married to Dr.J.B. Tali, a Hindu gentleman and she is said to have been converted to Hinduism. Both respondent Nos. 3 Anju Tali and her above named husband was posted at Jaipur and her husband is said to be attached as Junior Physician to Governor Hospital, Jaipur. Till recently the respondent No. 3 was a Reader in Gynaecology & Obstetrics and was posted as Reader in Hospital at Jaipur which is near Chandpolgate and she was also working as R.M.O. in that hospital. It was only in the month of May 1990 that the respondent No. 3 was promoted as Professor in Gynaecology & Obstetrics and was posted at Medical College, Udaipur. She remained there from May till October and it was under the impugned order Ex.2 dated 29th October 1990 that the respondent No. 3 was transferred to Medical College, Jaipur vice the petitioner Dr. Tara Mathur.

5. So far as the ground that the petitioner has been transferred under pressures of some M.L.A. which pressure was allegedly exerted on respondent No. 2 Shri Lalit Kishore Chaturvedi, Minister for Health, it may be stated that Shri Chaturvedi has filed his own affidavit and he was denied that any pressure was exerted on him by any M.L.A./M.L.As. to transfer respondent No. 3 though he has admitted in his affidavit that before her transfer she was working as R.M.O. and she had done some good work and some deputation met him and praised about her work as R.M.O. and her transfer was made looking to the administrative exigency. Ordinarily it is not possible for this court to come to the conclusion, of mala fides and they can only be inferred. The very fact that the respondent No. 3 has been transferred within five months of her promotion and posted as Professor Gynaecology and Obstetrics at Udaipur goes to show that her transfer to Jaipur is for other reasons and one of the reasons may be that her husband is posted at Jaipur under the Government of Rajasthan. may be there might have been some recommendation in her favour, but in the absence of any definite proof it is not possible to hold that the transfer has been made under pressure from anybody. It is well known that so far as Jaipur is concerned, if one doctor is posted at Jaipur, he or she as and when transferred, manipulates to cancel his/her transfer may be that while stay at Jaipur, being long and one stays long at Jaipur establishes private practice and does not want to go on transfer

and uses all means to see that he/she stays at Jaipur. It can also be said that if husband and wife are posted at one place and any one is transferred, the Government policy is that if spouse is posted at one place and if the husband and wife both are government servants, they should be placed at one place and if they file representation in this respect, the Government should consider it sympathetically to cancel the transfer order and both husband and wife would be allowed to continue at the same place. It is well established that the transfer is not punishment though at one time it may be harsh depending on the circumstances and if transfer is made and it being a normal incident of service, one can hardly complain about his or her transfer. I have already said earlier that the respondent No. 3 was posted at Jaipur and the husband of respondent No. 3 was also posted at Jaipur and therefore, as per the policy of the Government that the husband and wife should remain at the same place the respondent No. 3 was transferred to Jaipur after a period of five or six months on her promotion and posted at Udaipur, there can be no objection about it. No doubt there are other doctors, Professors in Gynaecology and Obstetrics in Zangana Hospital as well as in other hospital at Jaipur who have far longer stay than the petitioner. But it is for the Government to see as to which of the employees are to be posted at a particular place and in the absence of any definite policy and the policy in my opinion cannot be right, it cannot be said thereafter a period of few years one must be transferred. So far as the transfer of the respondent No. 3 is concerned, it cannot be said to be mala fide and made in colourable exercise of powers.

6. But so far as the petitioner is concerned, she has stayed here for more than two years, in normal circumstance she could have been due for transfer but her husband is suffering from Cancer which is not yet curable and there is material on record that such type of ailment with which he is suffering can be better treated at Delhi which is nearer to Jaipur, though not very far off from Udaipur also. The petitioner and her husband being employed in two different institutions with different employers, the policy of the government that both the government servants i.e. the husband and wife should be posted at one place cannot be applicable. But the government should consider sympathetically the case of the petitioner that her husband is suffering from a disease of Cancer and if possible to adjust the petitioner also at Jaipur more so when there are no complaints against the petitioner and more so it is not said that the administration of the petitioner at Mihila Chikitsalya, Sanganer Gate, was in a mess or needed improvement.

7. Thus though I would not like to interfere in the case of transfer of the petitioner on one of the grounds that her husband is posted at Jaipur, but direct the State Government to consider the case of the petitioner sympathetically and if possible try to adjust the petitioner also at Jaipur looking to the fact that her husband is suffering from Cancer which needs constant vigil.

8. Consequently, I would not like to interfere in the case of transfer of the

petitioner but if the petitioner makes any representation to the Government including Health Minister, her representation shall be considered objectively and shall be disposed of as soon as possible but in no case later than two weeks. Costs made easy with the above observations. The writ is dismissed.