
(1984) 02 GUJ CK 0015
In the Gujarat High Court

Dr. Saroj Ramesh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-02-1984

Acts Referred:

Citation : (1984) GLH 372 : (1984) 1 GLR 689

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by an Associate Professor of Pathology and Microbiology in the State's services. She challenges in this petition the order Annexure-HH page-32A dated 28-4-1983 and the Order Annexure-I page-32 dated 9-11-1983. The challenge to Annexure-HH is uncalled for because that order was not implemented or not acted upon. By that order Annexure-HH. the respondent No. 4 Dr. Karelia was given promotion as the Professor of Pathology (from the post of an Associate Professor which the petitioner also was holding) at Surat. The respondent No. 4 did not join that post at Surat and so, by the order Annexure-1 dated 9-11-1983 he came to be appointed as the professor of Pathology at the B.J. Medical College, Ahmedabad and by that order Annexure-1 the respondent No. 5 came to be appointed as the Professor of Pathology from the post of an Associate Professor, at Surat. These promotions of the respondent Nos. 4 and 5 are challenged by the petitioner in this petition on the ground that her case was not considered at the time when the cases of the respondent Nos. 4 and 5 were considered and they were given appointment.

2. The affidavit-in-reply has been filed by the State Government and an unsworn copy was taken on record without any objections from the petitioner and the respondent No. 4 on promise by Mr. Panchal for the authorities that in due course a sworn copy will be placed on the record to make the record complete. The affidavit-in-reply filed by the State Government shows that the petitioner's case in November 1983 was not considered, because in the year 1982 June, she had declined the offer of her promotion as the Professor of Microbiology at Jamnagar.

The correspondence that ensued requires to be noted. When the petitioner was given that offer, she stated as follows:

I received the above letter dated 8th June, 1982. I am unable to accept this promotion as Prof, of Microbiology at M.P. Shah Medical College, Jamnagar. I have no objection if a person junior to me is offered the above promotion.

The Government then served the petitioner with a Memorandum dated 8-6-1982 at page-61 which reads as follows:

Memorandum:

The Addl. Director of Medical Education and Research, Ahmedabad has asked to Dr. Mrs. Saroj Ramesh, Associate Professor of Pathology, B.J. Medical College, Ahmedabad for her willingness for promotion to the post of Prof, of Microbiology at M.P. Shah Medical College, Jamnagar. Dr. Mrs. Saroj Ramesh has informed that at present her circumstances are unavoidable. She has not to leave Ahmedabad. So in future if any vacancy of Professor at Ahmedabad arise, she should be considered. In view of the representation of Dr. Mrs. Saroj Ramesh, it is presumed that she is not willing to leave Ahmedabad on promotion, Govt, has taken a serious view of her unwillingness. She is hereby informed that if she will not furnish her willingness for the promotion to the post of Professor of Microbiology out of Ahmedabad within seven days from the date of receipt of this Memorandum, person junior to her will be considered for promotion and she will lose her seniority by virtue of her unwillingness for promotion.

3. As luck or ill-luck would have it, the occasion to fill-in that post of a Professor at the M. P. Shah Medical College, Jamnagar, did not arise. It was only when November 1983 came up the question of filling up to Professors' posts came up, one at Surat and the other at Ahmedabad. The Government had at this time refused to consider the case of the petitioner only on the ground that she was served with the above mentioned Memorandum in reply to her refusal to accept the promotional post at Jamnagar. (Earlier one post of a Professor at Baroda had come to be filled-in by one Dr. (Smt.) Handa. The petitioner has no grievance to make in this regard because she is admittedly senior to the petitioner even according to the provisional seniority-list of Associate Professors.

3.1. The question and the only question that arises is, can a seniorman otherwise eligible for promotional post be refused promotion on the ground that on an earlier occasion she had refused the promotion and she was warned, when there is no legal basis for the view that she will lose her seniority. A seniority is a valuable right as held by the Supreme Court itself in the case of the Union of India (UOI) Vs. Vasant Jayaram Karnik and Others, . So, the Government simply by issuing a Memorandum cannot tell any employee that simply because on some occasion in the past she had declined to accept the promotion, she will lose her seniority. So, that threat communicated to the petitioner in Annexure-I page-61 is an action without any basis of law and translation of that threat into reality in November 1983 while passing the impugned order is also to be treated

as without any foundation. If the Government so thinks fit, there is nothing to prevent the Government from making a law or a service rule that an employee who declines to accept the offer of promotion shall forfeit that right to promotion either for that post or for certain duration. In the absence of any such rule, a right cannot be taken away and this is the only ground on which the case of the petitioner has not been considered. She is, therefore, entitled to be considered for the purpose of promotion when the respondent Nos. 4 and 5 came to be promoted.

4. The result is that the impugned order promoting the respondents No. 4 and 5 being Annexure-I to the petition at page-32 cancelled. The Government is inclined to fill-in the post shall consider the case of the petitioner and other eligible persons and decide the question of promotion in accordance with the rules.

Rule is accordingly made absolute with no order as to costs.