

(2004) 12 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3875 of 2004

Dr. Vijay Laxmi Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 104 FLR 1187 : (2005) 3 SLJ 509 : (2005) 2 WLC 690

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; Rameshwar Deve, Dy. G.A. for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.

This writ petition under Articles 226 and 227 of the Constitution of India, has been filed by the petitioner against the respondents on 8.9.2004 with the prayer that by an appropriate writ, order or direction, the judgment dated 28.7.2004 (Annexure-6) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur (for short "the Tribunal") by which the appeal of the petitioner against transfer order dated 11.7.2004 (Annexure-1) was dismissed and the transfer order dated 11.7.2004 (Annexure-1) qua the petitioner by which the petitioner was transferred from Mahatma Gandhi Hospital, Bhilwara to Shri Jawahar Hospital, Jaisalmer and against the post, which was being held by the petitioner, the respondent No. 4 Dr. Arun Kumar Chouhan was posted be quashed and set aside and the respondents be directed to allow the petitioner to work at the place where she was working prior to issuance of transfer order dated 11.7.2004 (Annexure-1) i.e. at Mahatma Gandhi Hospital, Bhilwara.

2. The case of the petitioner as put forward by her in this writ petition is as follows :

The petitioner was working on the post of Senior Specialist (Gyne.) at Mahatma Gandhi Hospital, Bhilwara. She was also holding the charge of Principal Medical Officer, Bhilwara and she took the charge of the said post of PMO on 5.3.2004 and for that, copy of the certificate of transfer of charge dated 5.3.2004 is placed on record as Annexure-2.

Thereafter, through impugned transfer order dated 11.7.2004 (Annexure-1), the respondent No. 3 Dy. Secretary, Medical and Health Services (Group II) Department, Government of Rajasthan, Jaipur made transfer of as many as 147 doctors and by the same order Annexure-1, the petitioner, who is Senior Specialist (Gyne.), was transferred from Mahatma Gandhi Hospital, Bhilwara to Shri Jawahar Hospital, Jaisalmer against vacant post and against the post, which was being held by the petitioner including the post of Principal Medical Officer, the respondent No. 4 Dr. Arun Kumar Chouhan, who is Junior Specialist (Gyne.), was transferred.

The grievance of the petitioner is that the respondent No. 4 Dr. Arun Kumar Chouhan was first transferred from Asind to Bijoliya, but that transfer order was not complied with by him and thereafter, through impugned transfer order Annexure-1 dated 11.7.2004, he was transferred against the post, which was being held by the petitioner and that transfer order Annexure-1 has been challenged by the petitioner in this writ petition on various grounds and the main grounds are as follows :

(i) That the post, which was being held by the petitioner before her transfer through impugned transfer order Annexure-1, was the post of Senior Specialist (Gyne.) and she was also holding the post of Principal Medical Officer, Bhilwara and since the respondent No. 4 Dr. Arun Kumar Chouhan is Junior Specialist (Gyne.), therefore, he could not be transferred and posted against the post meant for Senior Specialist (Gyne.)

(ii) That since the respondent No. 4 Dr. Arun Kumar Chouhan is Junior Specialist (Gyne.) and since the post of Principal Medical Officer, Bhilwara, which was being held by the petitioner, was meant for Senior Specialist, therefore, from this point of view also, transfer of the respondent No. 4 Dr. Arun Kumar against the post which was being held by the petitioner was mala fide exercise of power on the part of the respondent Nos. 1 to 3 and the same was made to adjust him.

It may be stated here that before approaching this Court, the petitioner has also preferred an appeal before the Tribunal challenging the impugned transfer order Annexure-1, but the same was dismissed by the Tribunal through judgment Annexure-6 dated 28.7.2004. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondent Nos. 1 to 3 and their case is that the present transfers cannot be said to be mala fide as they had power to make transfers and further, the transfers were made on administrative exigencies. Hence, no interference is called for and this writ petition deserves to

be dismissed.

It may be stated here that despite service of notice, none has appeared on behalf of the respondent No. 4 Dr. Arun Kumar Chouhan.

3. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents and gone through the material available on record.

4. There is no dispute on the point that the respondent No. 4 Dr. Arun Kumar Chouhan is a Junior Specialist (Gyne.) and the petitioner is a Senior Specialist (Gyne.) meaning thereby both petitioner as well as respondent No. 4 are Gynecologist.

5. There is also no dispute on the point that before issuance of the impugned transfer order Annexure-1 dated 11.7.2004, the petitioner was holding the post of Senior Specialist (Gyne.) at Mahatma Gandhi Hospital, Bhilwara as well as the post of Principal Medical Officer, Bhilwara, as is evident from Annexure-2.

6. There is also no dispute on the point that the respondent No. 4 Dr. Arun Kumar Chouhan has been transferred against that post, which was being held by the petitioner, as is evident from the impugned transfer order Annexure-1 and his name stands at serial No. 19 and there is also no dispute on the point that by the same transfer order Annexure-1, the petitioner has been transferred from Mahatma Gandhi Hospital, Bhilwara to Sri Jawahar Hospital, Jaisalmer against vacant post.

7. The question for consideration is whether the transfer of the petitioner through impugned transfer order Annexure-1 has been made to adjust respondent No. 4 Dr. Arun Kumar Chouhan and for that, there was no reasonable basis on the part of the respondent Nos. 1 and 3 and if the transfer of the petitioner has been made to adjust respondent No. 4 with no reasonable basis, whether that transfer can be termed as mala fide one or not.

8. In my considered opinion, looking to the entire facts and circumstances just narrated above, since the post, which was being held by the petitioner, was the post of Senior Specialist (Gyne.) and since the petitioner was also holding the post of Principal Medical Officer, Bhilwara, therefore, the respondent No. 4 Dr. Arun Kumar Chouhan, who is Junior Specialist (Gyne.) could not be transferred or posted against that post, which was meant for Senior Specialist (Gyne.) and if he has been transferred and posted against the post, which was being held by the petitioner i.e. Senior Specialist (Gyne.) and Principal Medical Officer, in such a situation, it can reasonably be inferred or concluded in clear terms that the said transfer was made to adjust respondent No. 4 Dr. Arun Kumar Chouhan.

9. It is however made clear that so far as the independent transfer of the petitioner from Mahatma Gandhi Hospital, Bhilwara to Sri Jawahar Hospital, Jaisalmer through impugned transfer order Annexure-1 is concerned, it cannot be said that it was suffering from any basic infirmity or illegality, but since that transfer has been made to adjust respondent No. 4 Dr. Arun Kumar Chouhan

with no reasonable basis, therefore, that transfer of the petitioner can be said be suffering from mala fide exercise on the part of the respondent Nos. 1 to 3 and when this being the position, the impugned transfer order qua the petitioner cannot be sustained and liable to be set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioner is allowed and the judgment dated 28.7.2004 (Annexure-6) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur and the transfer order dated 11.7.2004 (Annexure-1) qua the petitioner by which the petitioner was transferred from Mahatma Gandhi Hospital, Bhilwara to Shri Jawahar Hospital, Jaisalmer and against the post, which was being held by the petitioner, the respondent No. 4 Dr. Arun Kumar Chouhan was posted are quashed and set aside.

However, it is made clear that in case the respondent Nos. 1 to 3 want to appoint any Senior Specialist (Gyne.) against the post which was being held by the petitioner at Mahtma Gandhi Hospital, Bhilwara, they may do so by again transferring the petitioner to any other place and in that case, this order would not come in their way. In other words, the respondent Nos. 1 to 3 are free to make further transfer of the petitioner in future, if the administrative exigency arises and this order would not come in their way.