
(1983) 12 GUJ CK 0006
In the Gujarat High Court

Gangaben J. Solanki

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-12-1983

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 157, 157, 158, 158

Citation : (1984) GLH 518 : (1984) 1 GLR 608

Hon'ble Judges : S.A. Shah, J

Bench : Single Bench

Judgement

S.A. Shah, J.—The petitioner challenges the order of her removal from service, passed by the District Health Officer on 9-3-1977. produced at Annexure-F and the appellate order dated 5-12-1977 passed by the District Development Officer, dismissing her appeal.

2.The facts of this petition inter alia are as under.

The petitioner was appointed as mid-wife by an order dated 7-10-1961 of the Deputy Director of Public Health Services, Baroda which is produced at Annexure-A. There is no dispute that the petitioner was a State Government servant at the time of her appointment. On coming into force of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "Panchayat Act") under the provisions of Section 157 the Department of Public Health and Medical Relief was transferred to the District Panchayats so that the panchayats can exercise the powers and functions and duties which are exercised by the State Government. It appears that with the transfer of Public Health and Medical Relief Department under the provisions of Sections 157 and 158 of the Panchayat Act, the petitioner appears to have been allotted to Ahmedabad District Panchayat. According to the petitioner she was sent to the Panchayat Service on deputation. The petitioner has produced a letter dated 5-3-1968 at Annexure-B which is written by the District Panchayat to the Director of Health and Medical Services at Ahmedabad which reiterates that the petitioner is a State Service employee and was working on deputation and intends to opt for Employees' State Insurance Corporation and the Panchayat

has no objection to relieve the petitioner.

3. The petitioner has averred in para 4 of the petition that she was transferred from place to place, the details of which were also given. The petitioner has worked at Sanand Centre from 1963 to 1968; for ten months at Detrej Centre, for ten months at Bareja Centre and for about 16 months at Nandej Centre. However, by an order dated April 23, 1971 along with others the petitioner was transferred from Nandej to Pimpili Centre. The said order of transfer has been produced at Annexure-H to the petition.

4. The petitioner, by a letter dated 31-5-1971 at Annexure-C informed the District Health Officer that she has surrendered the charge of her post on 6-5-1971 according to the transfer order. She has further stated that she is not willing to join her services at Pimpili in accordance with the transfer order contending that the transfer order was unjust and till this injustice is set right any leave due to her may be adjusted. It is not disputed by the learned Counsel for the petitioner that the petitioner has not joined duty at Pimpili and has remained absent throughout.

5. There are some correspondence which show that the petitioner wanted to opt for Government service or Employees' State Insurance Corporation. But the same was not granted and the petitioner has remained absent without permission. Therefore, respondent No. 3 initiated departmental proceedings by issuing charge-sheet 17-8-1973 at Annexure-D. The charge levelled against her was that she has not remained present at the transferred place, Pimpili, and thereby disobeyed the order of the authorities. The charge has further stated that by notice dated 4-11-1971 the petitioner was informed that if she does not join her transferred post within three days it will be deemed that she was not willing to serve and she will be removed from service, and that order has also not been complied by the petitioner. It is not disputed that the departmental enquiry was held and ultimately by an order dated 9-3-77 the petitioner was removed from service by respondent No. 3 who is District Health Officer. The petitioner appears to have preferred an appeal before the District Development Officer, Ahmedabad District, in which she has contended that she was appointed by the Deputy Director of Health Services whereas she was removed from service by the District Health Officer who is lower in rank than the appointing authority and the order is, therefore, illegal; that she was subjected to frequent transfers in violation of Government circular dated 20-9-1971; that the District Health Officer has not applied his mind and has not given any reasons for removing her from service; that the penalty which has been imposed is excessive; that the petitioner being a member of the Scheduled Caste was not liked by the authorities; that the District Health Officer had no power to remove the petitioner because the petitioner was sent to panchayat on deputation; and lastly the order of transfer was made in April 1971 whereas she was dismissed from service in March 1977 and the petitioner having not been suspended was entitled to the salary of the said period.

6. The appellate authority appears to have not entered into the questions of powers of the District Health Officer to remove the petitioner or the material issue as to whether the petitioner was a State Government servant or was on deputation or was allocated to panchayat. The appellate authority has rejected the contentions on the ground that under the Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964, though the District Health Officer is the competent authority to take disciplinary action, and the order having been passed after consultation with the Gujarat Panchayat Selection Board is in accordance with law. The appellate authority has not rightly considered the merits of the transfer order and removed the petitioner from service admittedly for remaining absent from the date of her transfer.

7. Mr. Supehia, learned Counsel for the petitioner has raised the following contentions:

(i) that the petitioner was appointed by the Deputy Director of Health Services, State of Gujarat, and the District Health Officer being an authority lower in rank, the order of dismissal is contrary to the provisions of Article 311 (1) of the Constitution; and hence ultra vires and void;

(ii) that the petitioner was admittedly a Government servant and was sent to Panchayat on deputation. In alternative he submitted that even if she is considered to have been allotted under the provisions of Sections 157 and 158 of the Panchayat Act, she continues to be a Government servant and, therefore, major penalty of removal or dismissal from service cannot be inflicted by the District Health Officer: and

(iii) that the order of dismissal is bad also on the ground that the same has been passed without any evidence, and suffers from non-application of mind.

8. This petition was originally heard on 15th September, 1983 and thereafter it was again called out on 1st December, 1983. Unfortunately, the State Government has not filed any affidavit-in-reply. Though the matter was heard on 1st December, 1983 and both the solicitors as well as the counsel appearing on behalf of the State were requested to find out whether the petitioner was sent on deputation or was allocated or whether she was absorbed in Panchayat service, neither an affidavit nor any material has been produced by the learned Counsel for the State on the ground that he was not getting any information from the State Government. In the circumstances there is no alternative except to proceed with the matter and examine the contentions of the petitioner as they are stated in the petition.

9. However, on behalf of respondent No. 3 one Jayantilal Keshavlal Bhatt, Administrative Officer, District Panchayat, Ahmedabad, has filed an affidavit-in-reply on 21-9-1983. But the deponent is not in a position to throw any light in respect of the status of the petitioner. Para 2 of his affidavit, being relevant, is reproduced below:

2. With reference to contents of paras 2 and 3, I say that it is true that the petitioner was appointed by the Deputy Director of Public Health Services, Baroda as Mid wife by his order dated 7-10-1961, but after the formation of Panchayat Rajya in 1963 many employees like the petitioner were transferred, allocated or deputed to the Panchayat services u/s 206 and Section 206A(1)(2). Therefore, they became the employees of panchayat unless they are re-allocated to the State Service under the rules. I say that the petitioner has not been re-allocated to the State Service since her allocation, transfer, deputation to the Panchayat services. Assuming without admitting that petitioner was on deputation even then according to Government Resolution dated 26-6-1969 and also as per Section 206A(1) and (2) the employees who had been originally allocated to the Panchayat service who have not been re-allocated since then till the date of this resolution (30-6-1969) are deemed to be the Panchayat services. Therefore, the petitioner who has been allocated or deputed, has not been re-allocated to the State Service since then, therefore the petitioner is a employee of the Panchayat.

10. I asked Mr. J.M. Patel, learned Counsel for the Panchayat to produce the Government resolution dated 30-6-1969. Unfortunately Mr. Patel is not in possession of the said resolution though he was instructed on 1st December, 1983 to produce the same. Mr. Patel says that in spite of his request, his client is not in a position to make it available, nor the Government has produced the said resolution. It is a very unfortunate state of affairs that neither party is prepared to assist the Court to reach a correct conclusion. I am constrained to decide the matter on merits as found from the available records.

11. The affidavit-in-reply filed on behalf of respondent No. 3 does not state whether the petitioner was deputed or allocated. If the petitioner was allocated u/s 206 there must be an order of the State Government making such allocation. If the petitioner is sent on deputation, there must be an order for such deputation. No order is forthcoming from both the authorities who are supposed to be in possession of such orders, if there is any.

12. Mr. Supedia, learned advocate for the petitioner draws my attention to Annexure-B dated 5-3-1968. The said letter was written five years after the Panchayat Raj came into force in 1973, when the petitioner was sent to Panchayat service. The said letter in terms states that the petitioner was a State Government employee and was working on deputation and as she does not want to continue on deputation and desires to opt for Employees' State Insurance Corporation, the panchayat has no objection to relieve her from deputation.

13. In spite of the clear contention raised before the departmental authorities that she was on deputation to the Panchayat, no specific finding has been given either by the Departmental authorities or the appellate authority and they both have proceeded on the footing that the petitioner having not been re-allocated has become a panchayat servant.

14. Since the services of the petitioner have been put to Panchayat Service under the provisions of Sections 206 and 206A(1) and (2) as contended by the deponent, it is necessary to deal with the provisions of Sections 206 and 206A.

15. Section 206 of the Panchayat Act deals with allocation of the officers and servants out of the staff allotted or transferred to Panchayat under Sections 157 and 158 as it may deem fit, and such other officers and servants employed in the State Service as may be necessary to enable the district and taluka panchayats to discharge efficiently their functions and duties under this Act. Mr. J.M. Patel, learned Counsel for the Panchayat is not able to point out whether the petitioner was allocated u/s 206 and, therefore, we cannot consider the petitioner as allocated to panchayat service.

16. Section 206A states that notwithstanding anything contained in Section 206, the allocation to the Panchayat Service made u/s 206 of officers or servants allotted or transferred to a district panchayat or a taluka panchayat u/s 157 or 158 shall initially be provisional and it shall be lawful for the State Government to review their allocation within a period of four years from the 1st April, 1963, and if necessary to re-allocate by an order made in that behalf any of such officers or servants to the State Service for any of the reasons stated therein.

17. Therefore, Section 206A applies to the employees who are allocated either u/s 206 or allotted under Sections 157 and 158 and subsequently allocated. Mr. Patel is not in a position to say that the petitioner was allocated at any time under the provisions of Section 206 even if the petitioner was allotted or transferred to the Panchayat service under Sections 157 and 158 of the Panchayat Act. If the petitioner is not allocated to the Panchayat service, then there are only two possibilities, namely, that the petitioner might have been sent on deputation or she might have been allotted under the provisions of Sections 157 and 158 though none of the respondents has raised the plea showing the allotment order of the petitioner.

18. Mr. Suphia, learned Counsel for the petitioner, brought to my notice certain observations made by the Division Bench of this High Court in the case of G.L. Shukla and Anr. v. The State of Gujarat and Ors. 8 G.L.R. 833. While dealing with the argument of the State Government that the effect of an order of allocation made u/s 206 is to bring about termination of service of the civil servant affected by the order of allocation, Bhagwati, J. (as he then was) observed as under:

It can, therefore, hardly be disputed that if the effect of an order of allocation made u/s 206 is to bring about termination of services of the civil servant affected by the order of allocation, it would be violative of the constitutional guarantee prescribed by Article 311(2) in so far as it would operate against a civil servant substantively holding a permanent post for it would have the effect of removing such civil servant from service without complying with the requirements of Article 311(2) and Section 206 which obliges or at any rate permits such removal from service would be bad as offending Article 311(2). Mr.

Kaji, learned Advocate-General appearing on behalf of the State attempted to escape from the logic of this conclusion by arguing that when an order is made by the State Government u/s 157 allotting Government servants necessary for the discharge of functions transferred to the District Panchayat under that section, the posts held by such Government servants in the State service are abolished and, therefore, the subsequent allocation of such Government servants to the Panchayat service u/s 206 would not amount to removal within the meaning of Article 311(2). This argument, we are afraid, tries to read much more in Section 157 than what it contains. It is not supported by the language of Section 157. All that Section 157 provides is that when the State Government transfers any powers, functions and duties to the district panchayat, the State Government shall allot to the district panchayat such personnel as may be necessary to enable the district pauchayat to exercise the powers and discharge the functions and duties so transferred. The Government servants who are allotted continue to be members of the State service holding substantively their respective posts in the State service and the said posts are not abolished as a result of the order of allotment. The main pivot of the argument of the State was that when the powers, functions and duties attached to the posts are transferred, there would be no point in keeping the posts in existence and the posts must be deemed to be abolished by necessary implication. But this contention suffers several infirmities.

It is, therefore, clear that even if a Government servant is allotted under the provisions of Section 157 of the Panchayat service since the functions and duties of that post is transferred to Panchayat, the Government servants who are so allotted continue to be members of the State service holding substantively their respective posts in the State service and the said posts are not abolished as a result of such order of allotment.

19. In view of the aforesaid clear finding of the Division Bench of this High Court it is not possible to hold that even if the petitioner was allotted under Sections 157 and 158 of the Panchayat Act she will cease to be a Government servant and is absorbed in Panchayat service.

20. Mr. Supedia, learned Counsel for the petitioner has also drawn my attention to Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 (hereinafter referred to as "the rules") under which disciplinary action is said to have been taken. Rule 1(c) being relevant is reproduced below:

1(c). Except as otherwise provided by or under these rules, they shall apply to all persons allocated and appointed to the Panchayat Service and persons holding posts under a Panchayat:

Provided that nothing in these rules shall apply to officers and servants of the State Service who are posted under the panchayats u/s 207 or are on loan service to the panchayats u/s 206 of the Act.

These rules, therefore, apply to all persons allocated to the Panchayat or

appointed to the Panchayat service. The respondents are not in a position to show that the petitioner was either allocated panchayat servant or appointed for the first time by the panchayat. The provision is also equally important which is in negative terms and states that:

These rules shall not apply to officers and servants of the State Government who are posted under the panchayats u/s 207.

If we refer to Section 207 of the Act which gives power to the State Government by a general or special order to post officers of the Indian Administrative Service and of Class I and Class II services of the State and such number on officers and servants allotted or transferred to a district panchayat or, as the case may be, taluka panchayat u/s 157 or 158, but not allocated to the Panchayat Service u/s 206, it clearly makes a difference between persons who are allocated and persons who are allotted. Even on transfer of functions and duties the staff might have been allotted to the panchayat, but by provisions of Section 207 of the Act they cannot be said to have been allocated to Panchayat service or absorbed in the Panchayat service. There is, therefore, clear distinction between the servants who are allocated and the servants who are allotted. Again, if we look to the definition of "panchayat servant" as given in Section 2(j), it means any person appointed to the panchayat service and includes an officer or servant allocated to the panchayat service u/s 206 or 206-A of the Act. This definition also suggests the same meaning as it is given u/s 207 of the Act. Members of the panchayat service are the persons who are either appointed or allocated to the panchayat service. No doubt, there are some provisions regarding persons who have been allotted to the panchayat service which have been brought into force by Gujarat Amendment Act 14 of 1980. But we are not concerned with those provisions because the departmental proceedings against the petitioners were initiated in 1973 and, therefore, this Court has to consider the legality of the orders of the departmental authorities on the date when the same were commenced by issuing charge-sheet.

21. In the aforesaid view of the matter it has not been proved by the respondents that the petitioner who was admittedly a State Government servant ceased to be so and his become a panchayat servant and therefore, the departmental authorities of the Panchayat had powers and jurisdiction to initiate departmental proceedings against the petitioner. The officers who inflicted the aforesaid punishment on the petitioner are not shown to have possessed authorities to do so and hence the departmental proceedings initiated are ultra vires and void and without jurisdiction and liable to be set aside. Neither Mr. Patel, learned Counsel for respondent Nos. 2 and 3 nor the learned counsels appearing on behalf of the State were able to point out as to how the petitioner ceased to be a Government servant. If the petitioner is on deputation, respondent No. 3 had no power to inflict the major penalty of removal and, therefore, his order being ultra vires, illegal and void, is hereby quashed and set aside.

22. Since I am setting aside the impugned order of removal on the aforesaid ground, it is not necessary to deal with other contentions. The petitioner is declared to be in continuous service with the respondents. The respondents are, therefore, directed to reinstate the petitioner in service and if the petitioner desires to join her post at Pimpri she can do so unless some other order is passed. The respondents are directed to reinstate the petitioner within fifteen days from the date of receipt of the writ. It is hereby made clear that the authority who has jurisdiction to take departmental proceedings against the petitioner can do so if so desired. In the result the petition is allowed. Rule is made absolute with no order as to costs.