
(1988) 10 GUJ CK 0010
In the Gujarat High Court
Case No : Spl. Civil Application No. 3969/88

J.K. Dave

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1989) 59 FLR 514 : (1989) 1 GLR 571

Hon'ble Judges : A.P. Ravane, J

Bench : Single Bench

Judgement

1. Should the Court interfere in matters of transfer of a Government servant or of an employee engaged by any other instrumentality of the "State"

as defined in Art. 12 of the Constitution of India ? In view of the decision of the Supreme Court and, that of the Division Bench of this High Court,

does the question not require re-thinking and fresh approach ? Is it not time for us to turn the searchlight to our ourselves and make a little

introspection ? The aforesaid questions need to be examined and answered in this petition wherein a lecturer of a college has challenged the legality

and validity of the order of his transfer.

2. The petitioner is serving as lecturer in sociology at Government Arts and Science College, Gandhinagar. He is ordered to be transferred to

Dharmandrasinhji Arts College, Rajkot. The petitioner challenges the legality and validity of the order transfer. It is contended that there are three

to four other lecturers who are in Ahmedabad and/or Gandhinagar colleges for a period of about 15 to 18 years. They have not been transferred,

while the petition who has put in lesser number of years of service at Gandhinagar has been ordered to be transferred. There is no merit in this

submission. Transfer is not to be made on the basis of seniority of employees or on the basis of serial order to be arranged according to length of

service at a particular place. Transfer of an employee is a matter of adjustment and accommodation to be made by the administrative authority

concerned. It is solely within the powers of the executive and it is not to be interfered with by Courts.

3. Simply because some averments are made in the petition and the order of transfer is labelled as discriminatory and/or actuated by mala fides it

does not become discriminatory or cannot be said to have been passed on account of mala fides. To make out a case for interference in

matter of transfer there should be concrete material which should be unimpeachable in character. It must be remembered that for running smoothly

the administration of any organisation the appropriate executive authority must have sufficient play at the joints. If sufficient lee-way is not granted

to the executive authority in matters like transfer of employees the administrative machinery may collapse or working of the same may come to a

grinding halt. Just as "the wearer only knows where the shoe pinches", only the administrative head of the organisation would know how difficult it

is to make necessary adjustment and accommodation for keeping the administrative machinery in smooth gear, much more so in these days of all

pervading attitude of "passing on the buck" and the least respect for the ethics of "work culture".

4. By the very nature of its position and the manner and method of working of the Courts, the Courts will be the least appropriate instrumentality to

decide the questions of transfer and non-transfer of innumerable employees of the State Government and other instrumentalities falling within the

definition of "Stated". When an order of transfer is challenged before the Court, initially there will be only one sided picture and that too partial

picture of the matter. In matters of transfer ordinarily other employees are also likely to be affected. Stay of transfer of an employee is likely to

have chain reaction. Some other employee who has no means to approach the Court, or who has no stomach for legal battle may meekly suffer the

hardship and bow down to an unjust order of transfer which might have become necessary on account of the stay of an earlier order of transfer.

Unless all the employees likely to be affected on account of the "stay" of an earlier order of transfer before the Court, entire true picture of the

issues involved would never be present before the Court. Moreover, in many services people in general are the really affected parties. By very nature of the limitations of Court, all such affected parties would never be before the Court, and the Court would not be in a position to take into consideration various factors affecting the other employees who are not before the Court and also affecting the people who would never be, before the Court.

5. Therefore, maximum possible restraint is called for, lest irreparable harm and damage may be caused to the larger interest certain administration while attempting to redress certain supposed or blown-up hardships of an individual employee. Be it noted that Judiciary is respected for its ability to act with restraint and sagacity and not on account of its instantaneous response in matters of minor difficulties and inconvenience of employees. Many such difficulties and hardships are often blown up out of proportion. Ordinarily it should be left to the administrative head to resolve such questions of hardships and inconveniences of individual employees. It would be well to remember that no administrative frame or machinery is perfect in the world. Each and every form of administrative set up or machinery will have its own plus points as well as minus points. Therefore, even if there is some difficulty or irregularity or lapse in passing orders of transfer the same have got to be ignored. If the correctives are to be applied by the Court the confusion will be worst compounded. In the aforesaid circumstances unless it is ex-facie shown that the order of transfer is passed as a measure of penalty and it is by way of victimisation it would not be proper for this Court to exercise its power under Art. 226 of the Constitution of India and interfere in matters of transfer.

6. The aforesaid view is supported by the decision of the Supreme Court in the case of Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division, Patna and Others, . Therein the Supreme Court has laid down almost in imperative language as a general proposition of law applicable in almost all types of orders of transfer 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"" (p. 313) In that case even though breach of guidelines with regard to transfers in department concerned was pointed out the Supreme Court declined to interfere

and merely stated that if it be so the authorities will look into the matter and redress the grievance of the employee concerned.

7. In the case of Taragauri Kalyanji Khimani v. District Panchayat, Jamnagar & Anr. 1984 GLH 589, a Division Bench of this High Court (Coram

: P. S. Poti, C.J. and G. T. Nanvati, J.) was surprised to note that the subordinate Civil Courts took matters of transfer lightly and have been

interfering making casual approach in passing orders staying such transfers. Even in respect of exercise of powers under Art. 226 of the

Constitution of India, while dealing with orders of transfer, the Division Bench of this High Court in the aforesaid case of Taragauri (supra) has

clearly stated that there should be a clear case of discrimination or circumstances which eloquently speak of mala fides. Administering a caution to

subordinate Civil Courts. The Division Bench of this High Court in that case observed as follows :

Any subordinate Civil merely because a suit is filed alleging that there is mala fide in the transfer would not be justified in passing an item order

staying the transfer even if there is a plea of mala fides remembering that mala fides succeed very rarely and it is not easy to 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 male fides deserving of notice for

grant of interim relief. In the same decision, the Court has further observed :

The subordinate Courts will do well to remember that in this process they are not promoting justice.

8. Looking at the continuous flow of matters challenging the orders of transfer one may pose a question : Is it not time to remind ourselves of the

aforesaid caution administered by the Division Bench to the subordinate Courts ?" Will it not be profitable to make a little introspection and turn

the search-light to our ownelves ?

9. In the facts of the instant case it cannot be said that the order of transfer is actuated by mala fides and that the same is arbitrary or

discriminatory. Hence the petition is rejected. Notice discharged. Ad interim relief granted earlier stands vacated.

(Only that part of the judgment approved for reporting is published.)