

(1987) 11 GUJ CK 0006
In the Gujarat High Court

K.N. Suthar and Others

APPELLANT

Vs

S.J. Munsha and Others

RESPONDENT

Date of Decision : 04-11-1987

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 203, 203

Citation : (1988) 1 GLR 70

Hon'ble Judges : D.H. Shukla, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—This appeal is directed against the order passed by S.H. Sheth, J. on December 22, 1978 in Special Civil Application No. 2512 of 1978. The facts giving rise to this appeal, briefly stated, are as under.

2. The third respondent S.Z. Parmar was recruited directly as a Senior Clerk in the service of Junagadh District Panchayat some time in 1970 when direct recruitment as Senior Clerk was permissible. In 1978, he sought an inter-district transfer from Junagadh to Sabarkantha District Panchayat. The District Development Officers of Junagadh and Sabarkantha Districts were consulted by the Development Commissioner before he passed the impugned order of transfer of the third respondent to Sabarkantha District Panchayat. It appears that after the impugned order of transfer was passed by the Development Commissioner, the District Development Officer, Sabarkantha by his letter dated August 5, 1978 changed his mind and informed the Development Commissioner that the transfer would prejudice the promotional chances of Junior Clerks belonging to the Sabarkantha District Panchayat. Since the order was passed by the Development Commissioner on August 4, 1978, he insisted that the same should be implemented. Thereupon the appellants filed Special Civil Application. No. 2512 of 1978 challenging the order of transfer firstly on the ground that it was not permissible in law to effect the transfer and secondly on the plea that the transfer was mala fide. The learned single Judge considered the submissions of the Counsel for the petitioners and rejected the same. The petition was,

therefore, dismissed. It is against that order that the present appeal is filed.

3. Mrs. Mehta, learned Counsel for the appellants, submitted that it was not open to the Development Commissioner to order the transfer of the third respondent to Sabarkantha District Panchayat since Panchayat Service was district-wise and if at all the third respondent could only be sent to Sabarkantha on deputation. We see no merit in this submission. Section 203 of the Gujarat Panchayats Act, 1961 provides that the Panchayat Service shall be regulated by rules. Sub-section (3) of that Section empowers the State Government to make rules regulating the mode of recruitment, transfers and promotions of officers and servant in the Panchayats service. Sub-section (5) of that Section in terms states that such rules may provide for inter-district transfers of servants belonging to the Panchayat service and the circumstances in which and the conditions subject to which such transfers may be made. It is, therefore, obvious that the State Government is entitled to frame rules in regard to the transfer of a Panchayat servant from one district to another district. The expression "district", so far as Panchayat service is concerned, means a district formed under the provisions of the Act, vide Section 2(6) of the Act. In exercise of powers conferred by the said provision, the Government of Gujarat framed the Gujarat Panchayat Service (Transfer of Servants) Rules, 1968. Rule 3 deals with inter-district transfers. It provides that a member of Panchayat service belonging to a district cadre in a district may, by an order in writing, be transferred by the Development Commissioner to the corresponding cadre in the other district if-(a) in the opinion of the Development Commissioner such transfer is required to be made - (i) in the interest of public, or (ii) in order to absorb the member on account of his services becoming surplus for requirements of the district from which he is transferred, or (b) an application is made to the District Development Officer in that behalf by the member and the District Development Officer of the other district agrees to such transfer under Sub-rule (2). Sub-rule (2) of that Rule requires that on receipt of such an application the District Development Officer shall, having regard to the interest of the relevant Panchayat in the District, decide whether the member may be transferred or not. Where he decides that the member may be transferred, he is bound to consult the District Development Officer of the District, to the corresponding cadre of which the member is to be transferred, to know whether he agrees to the transfer. The former District Development Officer has to forward the application together with other records to the Development Commissioner for taking action, that is, for effecting the transfer. In the present case we have pointed out earlier that the District Development Officer, Sabarkantha was consulted beforehand and the transfer was effected only after he had consented thereto. It was only after the transfer order was made by the Development Commissioner that the District Development Officer, Sabarkantha changed his mind and raised an objection. Naturally such an objection raised post-transfer could not be entertained by the Development Commissioner and the Development Commissioner therefore rightly insisted on his order being implemented by the concerned District

Development Officer. Under Rule 4 of the said Rules the inter-district transfers are subject to certain conditions one of which is that the member shall not claim seniority over the persons who rank last in a post having clear vacancy in the cadre to which he is appointed as a result of the transfer. We are, therefore, of the opinion that the provisions of law discussed above make it amply clear that the Development Commissioner had the power to transfer the third respondent from Junagadh District Panchayat to Sabarkantha District Panchayat, We, therefore, do not see any merit in the contention that the posting of the third respondent at Sabarkantha could only be on deputation and not by way of transfer. We reject the contention.

4. It was then submitted that the transfer was mala fide. In this connection our attention was invited to the averments in paragraph 6 of the petition. The learned single Judge has extracted the relevant passages in regard to the plea of mala fide in his judgment and has rightly pointed out that the averments are too vague and bereft of details. We are in agreement with the view expressed by the learned single Judge that the averments in regard to the allegation of mala fides fall short of proof and being wholly vague and bereft of details cannot be entertained.

These were the only contentions urged before us by the learned Counsel for the appellants. As we do not see any merit in these contentions, we dismiss this appeal with costs. Interim relief vacated.