
(2014) 04 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 2341 of 2014

Mahipat Gadhvi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 GLR 1947

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Kishor M. Paul, Advocate for the Appellant; D.M. Devnani, A.G.P, Advocate for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Mr. D.M. Devnani, learned Assistant Government Pleader, waives service of notice of Rule on behalf of respondent No. 1. On 13-2-2014, this Court issued notice for final disposal. In spite of issuance of notice, respondents Nos. 2 and 3 have not chosen to put in an appearance before the Court. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided. This petition under Art. 226 of the Constitution of India, has been preferred with a prayer to quash and set aside the order dated 24-6-2013, whereby the petitioner has been transferred from Ahmedabad to Rajkot, as well as the order dated 31-1-2014, passed by respondent No. 1 pursuant to the order of this Court dated 17-1-2014, in Special Civil Application No. 10626 of 2013, whereby the representations dated 22-5-2013 and 4-6-2013, made by the petitioner, have been rejected.

2. The brief facts of the case are that the petitioner is an ex-serviceman, who has taken premature retirement from the Indian Army. The service record of the petitioner in the Army, according to him, was neat and clean and he had served with courage and full dedication at various centres where he was posted. The petitioner has also received six medals for the meritorious services put in by him.

After his premature retirement, the petitioner was appointed as District Sainik Welfare and Resettlement Officer, Class-I, at District Sainik Welfare and Resettlement Office, Ahmedabad, vide order dated 1-7-2006. The petitioner was confirmed on the said post vide order dated 28-3-2008, after successfully completing the period of probation. The petitioner has served the respondent-Department for the last seven years and during this period, he has been posted at Ahmedabad. The petitioner is to superannuate from service on 31-7-2014. The wife of the petitioner is serving as Director, at the Directorate of Languages, Gandhinagar, under the State Government. Her post is a non-transferable one. The only child of the petitioner, a daughter, is studying in the 10th standard in Mount Carmel High School, at Gandhinagar. The petitioner is a resident of Gandhinagar and is serving at Ahmedabad. The petitioner was served with an order of transfer dated 24-6-2013, whereby he was transferred from Ahmedabad to Rajkot. By the said order, respondent No. 2 was transferred from Rajkot to Surat and respondent No. 3 was transferred from Surat to Ahmedabad, in place of the petitioner. According to the petitioner, respondent Nos. 2 and 3 had requested the office of respondent No. 1 for a mutual transfer from Rajkot to Surat and Surat to Rajkot and have joined at their places of posting. The petitioner, being an ex-serviceman and having served in a disciplined force, has also joined at his place of posting, at Rajkot. According to the petitioner, the order of transfer is contrary to the provisions of the policy framed by the State Government, which gives certain concessions to employees who are on the verge of retirement and whose spouses are serving at a particular place. The order of transfer was challenged by the petitioner by filing a petition, being Special Civil Application No. 10626 of 2013. By an interim order dated 17-10-2013, passed in the said petition, this Court had directed respondent No. 1 to decide the two representations made by the petitioner and to file an affidavit-in-reply. No reply was filed in the said petition and the representations were not decided. After hearing, the petition came to be disposed of, by the order dated 17-1-2014, directing respondent No. 1 to consider the representations of the petitioner dated 22-5-2013 and 4-6-2013, in accordance with law, taking into consideration that the impending date of superannuation of the petitioner is 31-7-2014, and the aspect that the wife of the petitioner is serving at Gandhinagar on a non-transferable post. Pursuant to the passing of the above order, respondent No. 1 has passed the impugned order dated 31-1-2014, whereby the representations of the petitioner have been rejected on the ground that the case of the petitioner for retention at Ahmedabad cannot be considered, as it is against the interest of the State Government and "others". Aggrieved by the aforesaid order, the petitioner has approached this Court by way of the present petition.

3. Mr. Kishor M. Paul, learned Advocate for the petitioner, has made the following submissions:

(I) That, by not considering the representations of the petitioner, the respondent-authorities have gone against the settled position of law and their own policy. The hardship faced by the petitioner, who is on the verge of retirement and

whose wife is serving at Gandhinagar, have not been taken into consideration by respondent No. 1, in spite of the fact that the Government Resolution dated 25-11-2005, provides that "couple cases" should be sympathetically considered and persons who are on the verge of retirement ought to be posted in their home town one year before the impending date of retirement, as far as possible. That there is no administrative exigency in the case of the petitioner that prevents respondent No. 1 from considering his case as per the said Government Resolution.

(II) That, the impugned order dated 31-1-2014, contains no reasons except that to retain the petitioner at Ahmedabad would be against the interest of the State and "others". It is not clear how the retention of the petitioner at Ahmedabad would harm the interest of the State. Who the "others" are, has not been specified in the impugned order, but it can only mean respondent Nos. 2 and 3, whose transfers have been effected along with the petitioner, by the same order.

(IV) That, in the affidavit-in-reply filed by the State Government, another reason has been added which is that the petitioner, being a retired Major of the Indian Army and an ex-member of a disciplined force, is expected to respect and implement the order of transfer. It is submitted that the policy of the State Government is to be applied equally to all employees of the State and there can be no discrimination against the petitioner only on the ground that he is an ex-serviceman.

4. Mr. D.M. Devnani, learned Assistant Government Pleader, has opposed the prayers made in the petition and has submitted as below:

(a) The concessions to be granted to employees who are nearing superannuation and employees whose spouses are working at a particular place, as per the Government Resolution dated 25-11-2005, are to be implemented as far as possible. In case there is an administrative exigency and if, for some reason, or in the public interest, such concessions cannot be granted, they cannot be claimed as a matter of right by the concerned employee.

(b) Respondent No. 3 is originally from Rajkot, therefore, he was not posted at Rajkot in place of respondent No. 2 and had to be posted at Ahmedabad in place of the petitioner.

(c) There were complaints against respondent No. 2, who was posted at Rajkot, therefore, it was thought fit by respondent No. 1 to transfer him to Surat. The incumbent in Surat was transferred to Ahmedabad in place of the petitioner. The transfer of the petitioner is a result of the above two transfers, as it is necessary in the exigency of administration. Therefore, the petitioner cannot claim, as a matter of right, to be posted at Ahmedabad.

5. This Court has heard learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

6. At the outset, let it be noted that this Court would be slow in interfering with an order of transfer in normal circumstances, as it is a settled position of law that transfer is an incident of service, and the employer can transfer the employee to any place where the services of such employee are required in the exigency of administration. In the present case, the issue for consideration is not whether the petitioner has any implicit right to stay at Ahmedabad, where he has already served for the past seven years. Admittedly, no such right can be said to exist in favour of any employee, including the petitioner.

7. However, it cannot be ignored that the State Government itself has issued a Government Resolution dated 25-11-2005, wherein detailed guidelines have been issued regarding transfer of employees. Certain concessions have been given by the State Government to certain categories of employees. Clause 8(2) of the Schedule-I to said Resolution provides that the State Government may consider posting the employee and his/her spouse who is in State Government services, at the same place, as far as possible and "couple cases" should be considered sympathetically. Clause 9 thereof provides that an employee, who is on the verge of retirement, should be posted to his Home Town or native place one year before the date of retirement, subject to there being nothing objectionable in such posting and considering the administrative requirements.

8. The petitioner is claiming the benefit of both the above concessions granted by the State Government in the Government Resolution dated 25-11-2005. It is not disputed that the wife of the petitioner is serving at Gandhinagar and the petitioner is at the fag end of his career, as he is due to retire on 31-7-2014. As per the policy of the State Government, the petitioner is eligible to be considered for the benefit of both the above noted concessions.

9. In the earlier round of litigation, this Court had directed respondent No. 1 to consider the case of the petitioner in view of the above policy of the State Government. The result of such consideration is the impugned order dated 31-1-2014, wherein not a single word is mentioned regarding why the petitioner cannot be considered under the policy, to be retained at Ahmedabad, as his wife is serving at Gandhinagar and he is about to retire on 31-7-2014. The only reason mentioned in the impugned order is that the case of the petitioner cannot be considered as it is not in the interest of the State and "others". How the retention of the petitioner at Ahmedabad can harm the interest of the State Government, especially as he was at Ahmedabad earlier and is to retire on 31-7-2014, has not been stated by respondent No. 1 in the impugned order. In addition thereto, who those "others" are, whose interests would be harmed by retaining the petitioner at Ahmedabad, has also not been clarified. It appears that the case of the petitioner has not been considered in light of the policy of the State Government to protect the interests of "others".

10. Learned Assistant Government Pleader has produced the original record for the perusal of the Court. Having gone through the same, this Court finds no reason for the non-consideration of the petitioner, who is on the verge of

retirement, as per the policy of the State Government. From the original record, it is clear that respondent No. 3, who has chosen not to appear before this Court, has made a representation to respondent No. 1, on 29-1-2014. The representation refers to the earlier petition filed by the petitioner, which came to be disposed of, on 17-1-2014, and also to the representations made by the petitioner for not transferring him at the fag end of his career. Respondent No. 3 has requested that as he has joined at Ahmedabad, he may not be disturbed. This appears to be the reason that has weighed with respondent No. 1, while rejecting the representations of the petitioner. The representation of respondent No. 3 has been considered, as it has been referred to at Sr. No. 8 of the impugned order. It also appears that the word "others" mentioned in the impugned order, has reference to respondent No. 3. It is, therefore, obvious that while passing the impugned order, the interest of respondent No. 3 alone has been kept in mind by respondent No. 1, but the direction issued by this Court in the order dated 17-1-2014, passed in Special Civil Application No. 10626 of 2013, that the case of the petitioner be considered in light of the fact that he is to superannuate on 31-7-2014, and his wife is serving at Gandhinagar in a non-transferable job, has not been considered at all.

11. There is not a word in the impugned order regarding why the concessions granted to employees, as per the policy of the State Government as encapsulated in the Government Resolution dated 25-11-2005, cannot be made applicable to the petitioner. No administrative exigency has been shown in the impugned order, and none is found after perusal of the original record. The words used in the impugned order "not in the interest of the State Government" have not been elaborated upon, therefore, it cannot be taken to mean that any action of the petitioner is harmful to the interest of the State Government. The record further reveals that there are no complaints against the petitioner. In fact, there are complaints against respondent No. 2, and that is the reason, according to the learned Assistant Government Pleader, for effecting the transfers of the petitioner, respondent No. 2 and respondent No. 3. It cannot be understood why the petitioner should be deprived of consideration for the benefits under the policy of the State Government, merely because it was thought fit by respondent No. 1 to transfer respondent No. 2, as there were complaints against him. The petitioner cannot be made to suffer due to complaints regarding another employee.

12. A perusal of the affidavit-in-reply further fortifies the fact that there has been no consideration of the case of the petitioner on the ground of policy. The only reason mentioned in the affidavit-in-reply is that the petitioner cannot challenge the order of transfer due to personal inconvenience and the inconvenience of his family. This averment is in direct contravention to the policy of the State Government, which has taken into consideration the inconvenience of the family where transfer involves a couple and where the employee is nearing retirement. Another reason stated in the affidavit-in-reply is that the petitioner has already joined at the place of transfer and as he is a retired Major of Indian Army, which

is a disciplined force, therefore, the petitioner should respect the order of transfer. This reveals the mindset of respondent No. 1, which is indicative of a subtle discrimination against ex-serviceman who, according to it, ought not to claim the benefit of the policy framed by the State Government for employees in general.

13. Further, the impugned order dated 31-1-2014, contains no reasons, whatsoever. Apart from stating that the case of the petitioner cannot be considered as it is not in the interest of the State Government and "others", no other reason has been mentioned for rejecting the representations of the petitioner. There is no mention of the Government Resolution dated 25-11-2005, and the policy of the State Government regarding "couple cases" and employees who are on the verge of retirement.

14. It is not for this Court to direct the respondent No. 1 where to post its employees. However, it is expected that when a policy is framed by the State Government, it should be applied uniformly and fairly and the benefit of such policy ought to be given to the employees as per its objectives. The policy ought not to remain a paper policy, merely for show, or to be implemented in a pick and choose manner. If the policy cannot be implemented in a particular case, sound reasons ought to be given and the administrative exigency ought to be disclosed.

15. The impugned order dated 31-1-2014, passed by respondent No. 1 appears to have been greatly influenced by the representation made by respondent No. 3. This is indicative of the inclination of respondent No. 1 towards respondent No. 3, and has resulted in a colourable exercise of power. The said order is, therefore, quashed and set aside. Respondent No. 1 is directed to consider the case of the petitioner in light of the Government Resolution dated 25-11-2005, in letter and spirit. The needful be done on, or before, 21-4-2014. The petition is partly allowed, to the above extent. Rule is made absolute accordingly. There shall be no orders as to costs.