
(1984) 03 GUJ CK 0034
In the Gujarat High Court

N.V. Ashar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80, 80(1), 80(2)

Citation : (1984) GLH 591 : (1984) 2 GLR 1333

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner (original plaintiff) sought an interim injunction against his transfer from Junagadh to Bharuch. He is Junior Employment Officer, a Class III employee in the employment of State Government. The learned Trial Judge rejected the application. He carried the matter in appeal. There, the learned District Judge held that the appeal and the suit were not maintainable on the ground that the plaintiff had not fulfilled the conditions under sec 80 C.P.C. for filing a suit without statutory notice.

2. It must be noted that alongwith the plaint, the petitioner-plaintiff had given an application Ex. 2 to the trial Court and obtained permission for instituting the suit without notice. That had become necessary because there was urgent and immediate need to obtain interim relief against the order of transfer. Thus, the suit was competently instituted u/s 80(2). However, the learned District Judge came to the conclusion that when the trial Court refused interim relief, it meant that there was no urgency and no need for immediate relief and, therefore, a suit was held not maintainable. This reasoning by the learned District Judge is clearly erroneous. The only consideration at the time of granting leave without serving statutory notice u/s 80(1) is whether the suit is for obtaining urgent and immediate relief against the Government. It is the urgency or immediate nature of the relief which would be relevant for deciding whether leave should be granted or not and not whether the plaintiff has good case for obtaining such immediate and urgent relief by way of interim order. Merely because the interim

relief is refused on merits, it cannot be said that there was no urgent or immediate need for interim relief in the suit. When the leave is granted, there is no question of the Court reviewing the grant of leave or returning the plaint. The Court having been once satisfied about the urgency, the requirement of statutory notice fades into total insignificance and the suit has to be tried as any other suit and merely because the interim relief is refused, the leave granted and the suit instituted will not become incompetent. In the case of *Bhalchandra N. Acharya v. State of Gujarat* reported in 1981 G.L.R.. 119, Mr. Justice B. K. Mehta has taken the same view.

3. Therefore, the order of the learned District Judge holding that the suit and the appeal were not competent and directing the trial Court to deal with the suit under proviso to Sub-section (2) to Section 80 is clearly illegal and erroneous and is required to be quashed and set aside.

4. The appeal of the petitioner-plaintiff was dismissed only on such technical ground. The Learned Counsel for the petitioner, therefore, argued that the appeal should be remanded back to the District Court for disposal according to law. Even though the appeal is dismissed on that ground, and not on merits, I do not consider it proper to prolong this interim litigation further, in fact of this case, I, therefore, heard the Learned Counsel s on merits of the injunction application Ex. 8. In the injunction application Ex. 8, in para 2, the plaintiff has stated that he has been transferred to Junagadh from Bhesan only two months prior to the impugned transfer. In para 3, the petitioner has made allegations of mala fide (to which I will refer to later) and in para 4, he has referred to his personal hardship due to transfer in the mid term. No other point was raised as regards the transfer within two months and transfer in the mid term, the agreement has lost the value by lapse of time.

5. As regards the ground of mala fide, the petitioner has made utterly vague allegation against the defendant No. 3-Employment Officer (who is not made a party in this revision application) and contended that because of certain representations by defendant No. 3, Deputy Director Mr. D. P. Vora had visited Junagadh office on 19-10-82 and it is alleged by the plaintiff that this Deputy Director had threatened the plaintiff in the office in the presence of other employees that the plaintiff would be transferred from Junagadh to a distant place. The plaintiff has not alleged any enmity or mala fide against the Director nor has he named any employee in whose presence such alleged threat was given. In the reply filed by the defendants, it has been pointed out that on 19-10-82, the petitioner was on leave and was not in the office. The transfer order has been passed by the Director of Employment and no mala fides are alleged against the transferring authority. Therefore, there is no prima facie case made out on this count of mala fide. The learned Trial Judge has referred to the Supreme Court judgment reported in AIR 1981 S.C. 1577 in the case of *Shantakumari v. Regional Deputy Director*. The Supreme Court has observed as follows:

the transfer of a Govt. servant may be due to exigencies of service or may be due to administrative reason. The Courts cannot interfere in such matters.

6. The petitioner has been continuing in his present post at Junagadh by virtue of interim order since about two years. The reply filed by the defendant shows that the plaintiff has worked at the same station for more than a decade. Bhesan is also near Junagadh. Having regard to the fact and circumstances of the case, the learned Trial Judge was justified in refusing interim relief.

The learned appellate Judge has dismissed the appeal of the plaintiff on erroneous ground. However, if there is no failure of justice, there is no reason to interfere in view of proviso (b) of Section 115(1) of the C.P.C.

7. In the result, the order passed by the learned District Judge in appeal directing the trial Court to deal with the suit as per the proviso to Sub-section 2 of Section 80 is quashed and set aside. However, the order dismissing the appeal is confirmed although on different ground. Thus, the revision partly succeeds and the rule is made absolute regarding the direction to deal with the suit as per proviso to Sub-section (2) of Section 80 and the rule is discharged as regards the injunction application Ex. 8 which shall stand dismissed.

8. The interim relief granted by this Court in this revision application will continue till 31-5-1984 and the impugned order of transfer will take effect from 1-6-84.