

(1994) 07 GUJ CK 0019
In the Gujarat High Court
Case No : SCA No. 6950 of 1994

Smt. K.M. Vasantha

APPELLANT

Vs

Chief Secretary, Gujarat State and Others

RESPONDENT

Date of Decision : 04-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16

Citation : (1995) 2 LLJ 1135

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

Bench : Single Bench

Advocate : M.R. Anand and R.C. Jani, for the Appellant; Anil R. Dave, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.D. Shah, J.—During summer vacation this Court passed following order:-

"Rejected for the reasons to follow".

I now proceed to record reasons for summarily rejecting the petition.

By this petition under Article 226 of the Constitution of India the petitioner, English stenographer Grade-I (Class-II) and Personal Secretary to Director General Police has challenged the order bearing No. LPK-1095-357-KH-4 dated May 5, 1994 by which she is transferred as Personal Secretary to Director General of Police, C.I.D (Crime and Railways). The transfer is within the city of Ahmedabad itself from one office to another in the same compound. The order of transfer inter alia recites that she would hand over charge of the post to V.P. Muralidharan, Private Secretary (English Stenographer Gr-I) (Class-II). Pursuant to such order of transfer V.P. Muralidharan had already taken over the charge of the post.

2. Before setting out and specifically dealing with the legal submissions made by the learned counsel Mr. M.R. Anand appearing for the petitioner, it would be

necessary to set out bare minimum facts giving rise to this petition.

(a) The petitioner was appointed as Stenographer (English) in the year 1965 in C.I.D. (Crime Branch). She passed G.P.S.C. examination of English Stenographer Gr. II in the year 1973 and examination of English Stenographer Grade-I in the year 1974. In 1976 she was promoted as English Stenographer Grade-I and posted in Anti-Corruption Bureau.

(b) On September 21, 1985, she was promoted as Personal Secretary to Director General of Police, Gujarat State, which is a Class-II post. It is her case that thereafter she has been given pay scale of Rs. 4000/- + other allowances as she has already completed 15 years of service. It is her further case that as English Stenographer Gr. I she has rendered services as Personal Secretary with various reputed officers like J.F.Re-beiro, G. Ramachandran, M.M. Singh, K. Dadabhoi, Shiv Lal, B.S. Nirula and lastly A.K. Tandon. It is her further case that she has rendered and performed her services with all such distinguished officers continuously and her services were appreciated by everyone.

(c) It is her case that by Notification bearing No. G.G/270/EST- 1075-6108-B dated October 10, 1980 it was decided that appointment to the post of Personal Assistant to the Inspector General of Police in the Gujarat state shall be made by promotion of a person on selection basis from amongst the persons working in the subordinate service of the Police Department who have served as Stenographer Gr. I for at least three years. Since she had completed more than three years of service as Stenographer Gr.I, she was promoted as Personal Secretary vide order dated September 13, 1985.

(d) Petitioner was thereafter promoted as Personal Secretary to Director General of Police and since 1985 she is working on the said post. On May 5, 1994, impugned order is passed transferring her as Personal Secretary to Inspector General of Police, C.I.D. (Crime) and it is such order which is under challenge in this petition on various grounds.

3. Mr. M.R. Anand, learned counsel appearing for the petitioner has strenuously urged before this Court that the impugned order dated May 5, 1994 transferring the petitioner from the post of Personal Secretary to Director General of Police, Gujarat State to personal Secretary, Director General of Police, C.I.D. (Crime and Railways) is illegal, unjust, discriminatory, arbitrary, as such transfer would in substance amount to demoting the petitioner to a lower post and secondly because transfer is arbitrary, capricious and, therefore, violative of Article 14 of the Constitution of India.

Secondly Mr. M.R. Anand has submitted that such order of Transfer having been based on the fact that petitioner is a female Stenographer would also violate principle of equality of opportunity as it is clearly hit by Article 15 of the Constitution of India as no citizen could be discriminatorily treated in the matter of employment solely on the ground of sex.

4. Before I proceed to deal with the aforesaid submission made by the learned counsel appearing for the petitioner, it would be necessary to state that in response to the notice issued by this Court, respondents have appeared and Shri N.K. Bhandari, Deputy Inspector General of Police (Administration) has filed the affidavit in reply. The stand of the respondents in the affidavit-in-reply is that the impugned order of transfer is not passed by way of penalty and/or with a view to discriminate the petitioner. Such order in fact does not amount to reverting or demoting the petitioner as she has been posted as Personal Secretary to Director General of Police C.I.D. (Crime and Railways) which post is equivalent to the post of Personal Secretary to Director General and Inspector General of Police, Gujarat State. By the impugned order, headquarter of the petitioner is not changed. The total pay packet or pay scale of the petitioner is not changed. The seniority of the petitioner in the cadre of Stenographer Grade-I is not affected. No adverse consequence would follow. It is in substance not an order of transfer but an order of posting only.

5. It is the case of the respondents that the order of posting/transfer is passed due to administrative reasons. It is pointed out that post of Personal Secretary is a post of confidence and personal faith. The Director General and Inspector General of Police, Gujarat State being the head of the Police Force in the State of Gujarat is carrying very heavy responsibility both from the point of security of State as well as for maintenance of law and order in the State. Such an officer ordinarily must have absolute choice in deciding as to who would work as his personal Secretary as on highly sensitive issues he receives information, gathers intelligence and takes very important confidential and secret decisions. Therefore, while seeing to it that an incumbent must hold the post of Personal Secretary (English Stenographer Gr.I), the holder of the post of Director General and Inspector General of Police must have choice of having his personal Secretary from amongst eligible candidates. In fact, holder of such post has his own individual style, methods and mannerism of working. The respondent No. 6 as Director General and Inspector General of Police intends to take his Personal Secretary along with him whenever he goes on tours. Very often, for office work he calls his Personal Secretary to Office on Sundays and Holidays. On number of days in a week, he sits in the office, late in the evening for office work, Respondent No.6 therefore desired, rather preferred to have a male stenographer to a female Stenographer as he felt that he will be more comfortable and at ease both while on tours and also while working late in the office at odd hours and on even holidays. He felt that to call upon a female Personal Secretary to travel with him on tours, to be with him in the office at late hours at night or even to call her on holidays and Sundays would not be proper for him as well as for the family of the Stenographer. He, therefore, expressed desire that he should have a male Stenographer so that he may not be embarrassed in calling his Personal Secretary as and when necessary, even at odd hours and on holidays and even directing him to accompany him on tours. He therefore proposed to the General Administration Department, Government of

Gujarat for giving posting to Shri V.P. Muralidharan as his Personal Secretary as he wanted to have a male Stenographer and not a female Stenographer. Such proposal made by the sixth respondent was found to be reasonable , just and proper by the General Administration Department, State of Gujarat and accordingly the impugned order was issued.

6. It is thus clear that with a view to become more comfortable and at ease and with a view to seeing that his Personal Secretary is available as and when required, the sixth respondent has preferred a male Stenographer to a female Stenographer. His contention is that it would be improper or undesirable to ask a female Stenographer who by virtue of her post is designated as Personal Secretary to accompany him on tours for number of days, to ask her to attend his office upto late at night and to ask her to attend his office even on Sundays and holidays. He justifiably felt that in view of the nature of his duties and more particularly the way in which he was working, a male Personal Secretary or Stenographer would be preferable and would add to smooth working and administration. He has no personal prejudice against the petitioner nor is he inimical to petitioner. He has not in any way undermined or underestimated the petitioner but has preferred to have male Personal Secretary for the reasons stated herein-above.

7. In view of the aforesaid positive stand taken in the affidavit-in-reply, two important questions would arise for consideration of this Court, viz. (1) can a holder of the post of Personal Secretary to post of high dignitary as a matter of right insist that he/she alone shall be the Personal Secretary and that the officer shall have no choice? In the alternative can the holder of a high office prefer a Personal/Private Secretary of his/her choice both looking to the nature of duties to be performed and personal confidence and faith to be reposed and secondly from the point of creating and maintaining convenient, comfortable and congenial atmosphere and cordial relations between the officer and the Personal Secretary?

8. Before this Court proceeds to deal with and answer the aforesaid two questions, it is required to be noted that the post of personal Secretary (Private Secretary) to Constitutional Functionaries or certain other important officials is a very sensitive post. To illustrate or just mention a few of such posts would be the post of Personal Secretary/Private Secretary to very senior Defence personnel to Secretaries of Defence Ministry, Foreign affairs Ministry, Finance Ministry and Home Ministry, to Chief Election Commissioner, to Chairman of Planning Commission, to personal in-charge of External and Internal Security of the State, to Head of the Police Force or Border Security Force or Reserved Police Force etc. The holders of such posts of vital importance rely upon and act with implicit faith in their private secretary. Such persons ordinarily choose or nominate private secretary/personal secretary of their choice for number of reasons. Such officials are required to deal with several matters which are brought before them in the discharge of their duties. Number of information, communications,

correspondence etc., which may be received and which is dispatched is in number of cases highly secret, confidential and is one which is to be kept to the officer and his personal secretary alone. Very often such highly placed officials have their individual method and style of working. Complete adjustment between the highly placed officer and the personal secretary is absolutely essential for smooth working and administration. The post of Director General and Inspector General of Police in a State is vitally important post. As the chief of the Police force, his Office is called upon to handle correspondence which require a high degree of secrecy and confidentiality. He has to receive secret, confidential information from all quarters. His office assumes importance in a State like Gujarat, which has a very long coastal boundary and whose territorial limit extends to the neighbouring country like Pakistan. The activities of the smugglers, the possibility of infiltrators and terrorists from the foreign nations coming to the State, various other activities referable to the security and integrity of the State, various secret information about maintenance of law and order situation, about activities of hardcore criminals, their hideouts, operation of their gangs etc., are a few of highly sensitive activities amongst many other important activities required to be performed by person working as Director General and Inspector General of Police . It is therefore imperative that the person working as Private Secretary to such officer must be one in whom implicit faith and confidence can be placed. He must be a man of impeccable character and integrity besides being competent in secretarial work. Integrity, honesty and competence are the basic hallmarks for the post. In addition, he must be a person in whom the officer has absolute trust and faith. It is for this reason that ordinarily tenure of the post is made coterminous with the tenure of the holder of the post. That is for the obvious reason that a man chosen by the predecessor may not be enjoying the same degree of confidence of his successor. He may like to have his own man of confidence to attend to his secretarial work, he may have his own style, method and manner of working to which a person of his choice has already adjusted or could adjust. He may not even adjust or find it difficult to adjust to a particular Private Secretary who was attached to his predecessors or who was the senior-most in the cadre of Private Secretaries. It is thus clear that having regard to the special needs of the post, choice of Private Secretary (Personal Secretary) is ordinarily left to the absolute discretion of the holder of the post. By choosing or selecting Private Secretary (Personal Secretary) of such post, equality of opportunity in the matter of employment is not denied to personal/private secretary of the predecessor. In fact, holder of such post of Personal Secretary/Private Secretary continues to hold the same post with same designation, same pay scale and pay packet. There is no reversion of such an individual. However, the power to select or choose Personal Secretary/Private Secretary of one's choice in case of holder of posts of vital importance is required to be conceded for certain functionaries and having regard to the special needs of the post, it is imperative to leave the matter of choice of person-nel in the absolute discretion of the holder of such post.

9. In the case of *Ajit Singh Vs. Chief Election Commissioner of India and Others*, similar challenge was raised by appellant Ajit Singh to appointment of one M.L.Sarad as Private Secretary to the Chief Election Commissioner both on the grounds that such appointment was contrary to the Election Commission (Recruitment of Staff) Rules, 1974 and also on the ground that he was senior and eligible for being appointed on such post and that appointment of Second respondent as Private Secretary to the Chief Election Commissioner was arbitrary and discriminatory. In the aforesaid case, the Recruitment Rules of 1974 were subsequently amended by the President which amendment rendered appellant not eligible for appointment to the post. Even such amendment was challenged before the Supreme Court. While negating the challenge to such appointment of respondent No.2 Justice A.M. Ahmadi, speaking for the apex Court, made following pertinent observations (at pp,2258, 2259 of AIR):-

"8. Coming to the next limb of attack it must be realised that in democratic republic like ours the office of the Chief Election Commissioner is of vital importance. Article 324 confers the power of superintendence, direction and control of elections in the Chief Election Commissioner. Free and fair elections are the basic postulates of any democratic order. A duty is cast on the Chief Election Commissioner to ensure free and fair elections. This makes the post of the Chief Election Commissioner a sensitive one. The Chief Election Commissioner has to deal with several matters which are brought before him by political parties as well as the Government. His office is called upon to handle correspondence which require a high degree of secrecy and confidentiality. He would naturally require the services of his Private Secretary for handling such highly secret and confidential files and correspondence. It is therefore, imperative that the person working as Private Secretary to the Chief Election Commissioner must be one in whom implicit faith and confidence can be placed. He must be a man of impeccable character and integrity, besides being competent in secretarial work. Integrity, honesty and competence are the basic hallmarks for the post. In addition, he must be a person in whom the Chief Election Commissioner has absolute trust and faith. For this reason that the tenure of the post is made coterminous with the tenure of the Chief Election Commissioner. That is for the obvious reason that a man chosen by the predecessor may not be enjoying the same degree of confidence of his successor. He may like to have his own man of confidence to attend to his secretarial work, it is therefore, not without reason that the choice of personnel to the post of Private Secretary is left to the Chief Election Commissioner himself, This is nothing new. Similar provision is made for certain other functionaries as can be seen from the Home Department's notification dated September 1, 1958 as amended from time to time. We are, therefore, of the opinion that having regard to the special needs of the post it was imperative to leave the matter of choice of personnel in the absolute discretion of the Chief Election Commissioner. We, therefore, do not think that the office order of February 18, 1980 can be struck down. The High Court was, therefore, right in limiting the relief upto December 14, 1979 i.e. till the 1974

Rules became effective. Since consultation with UPSC was not necessary after the amendment introduced by the 1979 Rules, the Chief Election Commissioner was entitled to choose a man of his confidence as Private Secretary. The choice of respondent 2 to the post cannot, therefore, be questioned."

10. It is thus clear that looking to the sensitive nature of the post which Director General and Inspector General of Police of the State of Gujarat holds and looking to the nature of duties to be performed and responsibilities to be shouldered by such highly placed official, choice in the matter of selection of Private Secretary/Personal Secretary shall have to be given. For the reasons which are clearly stated here-in-above and his method, manner and style of working, a female Private Secretary/Personal Secretary would not be acceptable to him. He would be seriously handicapped and inconvenienced in the discharge of his duties. He will not be in a position to work in his office up to late at night. He will not be in a position to decide and deal with number of files and number of matters while on tours. Under the circumstances, acceptance of his request by the State Government and providing him Private Secretary/Personal Secretary of his choice has not in any manner violated any of the rights of the petitioner.

10.1 The submission of Mr. MR. Anand learned Counsel appearing for the petitioner that the impugned action would be violative of Article 15 of the Constitution of India, equally has no merit if appreciated in the aforesaid perspective. Firstly the petitioner is not denied any equality of opportunity in the matter of employment solely on the ground of sex. Article 15 provides that the State shall not discriminate against any citizen on grounds whether of religion, race, caste, sex, place of birth or any of them. The petitioner was appointed and promoted to the post of Stenographer Grade -I (Class-II). She was posted as Personal Secretary to Director General of Police, Gujarat State and has continued to serve as such. By the impugned action she is not deprived of her post of Stenographer Grade-I (Class-II). She is not deprived of her post of Private Secretary. She is now posted as Private Secretary to Director General of Police, CID (Crime and Railways). Thus, she would cease to be a Private Secretary to Director General and I.G of Police of the State. This cannot be said to be discriminating the petitioner on the ground of sex only, It is required to be kept in mind that her post is that of Stenographer Grade I (Class-II) though incidentally she works as Private Secretary also. As observed here-in-above, the post of Private Secretary/Personal Secretary, when it is attached to a highly sensitive post as that of Chief Election Commissioner, Defence Personnel or Inspector General of Police of a State, special considerations apply because of the nature of work to be performed, the duties and responsibilities attached to the post, the style, manner and method of working of the incumbent etc. The incumbent of the post must be given the discretion or choice to have the Private Secretary/Personal Secretary who is man/woman of his/her selection, faith and confidence and who is in a position to work by adjusting to his style of working. It is therefore not on the ground of sex alone that the impugned decision is taken. Other germane and relevant factors have entered into consideration. In a

case where a female employee working as Grade-E-Clerical worker in the Accounts Office of the employer at Nottingham was denied equality of treatment as was provided to male clerical worker employed by the employer in its London Office, the Employment Tribunal in the Case of Navy, Army and Air force Institutes v. Varley, reported in 1977(1) All ER 840, held that the variation between the hours for which female employees worked in Nottingham Office and the hours for which the male employees worked at London was real, genuine and material difference. It would not amount to giving unequal treatment to female employees solely on the ground of sex. In the present case , it is difficult to hold firstly that any discriminatory treatment is meted out to the petitioner, secondly, I am of the opinion that in the matter of selection of Private Secretary/Personal Secretary to the post of Director General and Inspector General of Police of a State, he must have choice and wide discretion, and thirdly when factors taken into consideration by authority are relevant and genuine, the decision of (he authority cannot be voided as discrimination is not meted out solely on the ground of sex but on the ground that in the selection of Private Secretary/Personal Secretary the holder of the post must have choice and such choice must be based on relevant factors. When it is pointed out to the Court that very vital and relevant factors have weighed with the authority in exercising the choice, it cannot be said that Article 15(1) of the Constitution of India is violated in not selecting petitioner for the post or in selecting respondent No.2 for the post.

11. In the result, I do not find any substance in any of the submissions made.