

(2005) 12 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 10817 of 2002

Snehlata R. Patel

APPELLANT

Vs

Bharuch District Panchayat and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 175, 203, 227, 228, 229

Citation : (2005) 12 GUJ CK 0015

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : P.H. Pathak, for the Appellant; Sejal K. Mandavia, for Respondents 1-2 and Government Pleader for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The short facts of the case are that the petitioner was appointed by the Bharuch District Panchayat, Respondent No. 1 herein and she is holding the post of Treasurer in the set-up of Bharuch District Panchayat. It appears that the original Bharuch Revenue District is divided into two parts namely; Bharuch District and Narmada District and in Narmada District, Talukas Nanded, Dediapada and Sakbara are included. On account of the aforesaid formation of new Narmada District and as certain area of Bharuch District is also included in Narmada District, new Narmada District Panchayat is formed and the service of the petitioner is allotted to Narmada District Panchayat.

2. It appears that the State Government has passed the order for the purpose of allocation of various employees of Bharuch District Panchayat to Narmada District Panchayat and based on the said order of the State Government on 25.8.2001, the District Development Officer (DDO), Bharuch has passed the order for allocation of service of the employees of Bharuch District Panchayat to Narmada District Panchayat. The perusal of the said order shows that as decided by the State Government such employees are to be placed loan service for a temporary period and the petitioner together with the other employees who are juniors in

the post of tracers are also sent on loan service. Of course, it is the contention of the petitioner that it is not a matter of allocation of loan service, but is on deputation. The case of the respondent District Panchayat is that the petitioner is allocated on the basis of the policy decided by the Government to allocate junior most employee in the cadre and accordingly the order has been passed by the DDO, whereas the case of the petitioner is that even for the purpose of deciding the seniority, such seniority list is required to be prepared on the basis of roster point available and on the basis of availability of the post for that particular category. It is also the further contention of the petitioner that since the petitioner is belonging to Scheduled Tribe (ST) and her appointment was in ST category and if the seniority list is prepared category-wise, she would not be the junior most or at least she would not fall in the category of junior employee, who are to be allocated to Narmada District Panchayat. It is also the case of the petitioner that the husband of the petitioner is serving with Life Insurance Corporation of India (LIC) at Valiya, Ankaleshwar and since even as per the policy of the Government as far as possible, husband and wife are to be posted at the same place and they are not to be disturbed, the petitioner ought not to have been allocated on deputation to Narmada District Panchayat, whereas the stand of the District Panchayat is that the policy of the Government or the decision of the Government provides for not to disturb husband and wife who are in the service of the State Government or the Panchayat Service and such benefit is not extended to the employees whose spouses are serving in any Government of India undertaking like LIC.

3. It may be recorded that earlier the petitioner, upon the apprehension of termination in the year 1995, preferred Special Civil Application No. 3293 of 1995 and at that stage, it was declared on behalf of the Panchayat that there was no proposal for termination of the service of the petitioner and the apprehension voiced by the petitioner was without any basis and, therefore, the said petition came to be rejected. It also appears that thereafter in the year 2001 the petitioner preferred another Special Civil Application No. 7122 of 2001, challenging the order of the District Panchayat for allotting her service on deputation to Narmada District Panchayat, and the very order is also impugned in this petition. In the said petition this Court (Coram: P.B. Majmudar, J.) as per the order dated 2.7.2002, observed for the representation to be made by the petitioner and such representation to be decided by the District Development Officer. Thereafter the District Development Officer has passed the order on 18.10.2002, whereby the earlier order dated 25.8.2001 for allotting the service of the petitioner to Narmada District Panchayat is maintained and it was observed that the petitioner is not falling in the exceptional category of posting at the same place to husband and wife and it is under these circumstances, the petitioner has approached this Court by preferring the present petition.

4. Heard Mr. Pathak, learned Counsel for the petitioner, Ms. Mandavia, learned Counsel for Respondents No. 1 and 2 and Mr. Desai, learned AGP for Respondent No. 3.

5. Mr. Pathak, learned Counsel appearing for the petitioner raised the first contention that the order provides for deputation of the petitioner to Narmada District Panchayat and he submitted that as per the settled legal position no employee can be sent on deputation to other service without his consent and in the submission of Mr. Pathak, the impugned order deserves to be quashed on the said ground only, whereas it is the contention of the respondents that though the language used is deputation, but in reality the same is the allocation of service of the petitioner to Narmada District Panchayat.

6. It is true that a person cannot be sent on deputation without his consent and the law is settled on the said aspect as per the decision of this Court in case of Bhagwatiprasad Gordhandas Bhatt v. The State of Gujarat and Ors. reported in 1977 GLR 562. However, the distinguishing feature in the present case is that the order cannot be termed as that of deputation and is rather an order for allocation of service. There is no dispute on the point that the service of the petitioner is governed by the Gujarat Panchayat Act (hereinafter referred to as "the Act") read with the relevant Rules and the petitioner was appointed in service of Bharuch District Panchayat. Chapter 13 of the Act provides for matters relating to the services. The said Chapter, inter alia, provides for services of the Panchayat employees to be regulated by Rules. Sub-section (4) of Section 227 of the Act provides that in addition to the post in the cadre referred to in the Sub-section (3), a Panchayat may have such other posts of such class as the State Government may general or special order determine. Such posts are to be called as deputation posts and shall be filled in accordance with the provisions of Section 231. Section 228 of the Act provides for the expenditure towards the pay and allowances of and other benefits available, to an officer or servant of the Panchayat to be met by that Panchayat. Section 229 of the Act provides for mode of appointments. Section 230 which is relevant for the purpose of this petition reads as under:

230 (1) The State Government shall, by a general or special order, allocate to the panchayat service-

(i) Such number of officers and servants, out of the staff allotted or transferred to a panchayat u/s 175 and 276 as it may deem fit.

(ii) all officers and servants of the nagar panchayats dissolved u/s 261.

(iii) such officers and servants employed in the State service as may be necessary to enable the panchayats to discharge efficiently their functions and duties under this Act.

(2) The Officers and servants allocated to the panchayat service under sub-section (1), shall be taken over by such panchayats in such cadre, on such tenure, remuneration and other conditions of service, as the State Government may, by general or special order determine:

Provided that the conditions of service of any such officer or servant shall not be

less favourable than those applicable to him immediately before such allocation.

Therefore, Section 231(1) of the Act provides that allocation to the Panchayat service can be provisional for a certain period and reallocation of the Officers or servants to the State service. Therefore, Section 231 of the Act, inter alia, provides for the power of the State Government to review the allocation within a period of four years from the date of allocation or transfer.

Section 232 of the Act provides for posting of the Officers of Class-I and Class-II Cadres and also for the posting of officers of Class-III Cadre working with the State Government.

Section 233 of the Act provides that any Panchayat may, subject to the rules made in this behalf, obtain the services of any officer of Government on loan.

Section 234 of the Act provides that such officer or servant who is allocated to the Panchayat service u/s 203, shall not be entitled to any compensation under the Industrial Dispute Act or law and no claim for any such compensation shall be entertained by any Court, Tribunal, or Authority.

7. Therefore, on conjoint reading of the aforesaid Scheme of the Act, more particularly from Section 227 to 234 of the Act, it appears that it is within the power of the State Government to allocate by general or special order the service of the servants working in one Panchayat to another Panchayat. In the present case, on account of the formation of new Narmada District certain areas of Old Bharuch District has ceased as the area of Bharuch District Panchayat and has fallen in the area of Narmada District Panchayat. In view of the said contingency coupled with the enabling power with the State Government under the aforesaid provisions, when the Panchayat servant is allocated to a different newly formed Panchayat, which includes certain areas of the old Panchayat, such allocation of servants cannot be said as simply a deputation as sought to be canvassed on behalf of the petitioner by Mr. Pathak. It is true that the employer gets changed from Bharuch District Panchayat to Narmada District Panchayat in such contingencies, but the Act or the statutory Rule provides for enabling power with the State Government. It is not a matter where the employer which is Bharuch District Panchayat has taken decision for allocation of service of the petitioner to Narmada District Panchayat. It appears that the State Government took a policy decision of allocating the services of certain staff of Bharuch District Panchayat to Narmada District Panchayat on account of the inclusion of certain areas in the new Narmada District Panchayat and when such decision was taken it also provided for the policy, the method and manner of exercise of the power for allocation. It, inter alia, provided for the policy of not to disturb husband and wife if they are in Panchayat service or they are the employees of the State Government. The options were also called for and if sufficient number of staff is not available and the surplus staff remains, then in that case the junior most employee in that particular cadre was to be allocated to new Narmada District Panchayat. It appears that District Panchayat respondent No. 1 herein, in view of

the general orders of the State Government, on 25.8.2001 has passed the order for allocation of the service of the petitioner to Narmada District Panchayat. Therefore, when the District Panchayat has exercised the power in pursuance of the decision of the State Government, which is competent to provide for allocation of service of Panchayat servants, such an order cannot be said as the order on deputation as sought to be canvassed on behalf of the petitioner by Mr. Pathak and, therefore, the said contention of Mr. Pathak cannot be accepted and hence rejected.

8. Mr. Pathak raised contention that no order is passed by the State Government of allocation of services and the order is passed by the District Panchayat and in his submission the order for allocation of service is required to be published in the Official Gazette as per Section 264 of the Act. The said contention is ill-founded in as much as, as observed earlier, the State Government has passed the general order and publication of such order is not provided. Section 264 of the Act provides for alteration of the limits of District Panchayat(s) and it does not pertain to allocation of services.

9. Mr. Pathak, learned Counsel also submitted that the order speaks for deputation and, therefore, it is to be strictly construed as order for deputation and it is not open to the respondent Authority to add or substitute the reasons by filing affidavit since in the affidavit the contention is of allocation of service.

10. As such in the order, it is also mentioned as loan service and, therefore, it is not correct to state that the order only speaks for deputation. Apart from the above, the exercise of power by administrative order can be made good by justifying the reasons as and when it is challenged in Court of law. It is not a matter of exercise of power by as a quasi judicial Authority. The reliance placed upon the decision of the Apex Court in case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, therefore, is ill-founded in as much as the Election Commission exercising the power is at par with the Authority exercising the quasi judicial power.

11. The aforesaid takes me to examine the second contention raised by Mr. Pathak that the husband of the petitioner is serving with LIC in Bharuch District at Valiya, Ankaleshwar and, therefore, even as per the policy of the Government the petitioner ought not to have been allocated to Narmada District Panchayat.

12. As such the employees of LIC, which is a Government of India's undertaking cannot be equated for all purpose with the employees of the State Government or Panchayat Servants. The policy of the Government providing for allocation does not provide for the employee of the Central Government. Therefore, when it is an admitted position that the husband of the petitioner is neither serving with the State Government, nor is in employment of any District Panchayat, the contention of Mr. Pathak cannot be accepted that even as per the policy of the Government, the petitioner could not have been transferred from Bharuch District Panchayat to Narmada District Panchayat and hence, the said contention

of Mr. Pathak fails.

13. It was also contended by Mr. Pathak that the benefit of such policy should also be extended to the spouses of the employees who are serving with Government of India enterprises.

14. In my view, such aspect essentially is a policy matter. Further, the employee of the Government of India Enterprises cannot be termed as the employee of the Government of India and, therefore, no such right can be asserted as sought to be canvassed on behalf of the petitioner. Further, if the State Government has taken a policy decision, in absence of any material brought to the notice of the Court that such policy is ex-facie arbitrary, it cannot be said that the employees of all Government of India Enterprises, in a matter of transfer or allocation of service, must be treated at par with the employees of the State Government and such benefit be extended to them. At the same time, even if the policy provides for not to transfer employee whose spouse is either Government servant or in Panchayat service, it does not rule out the possibility of consideration for retaining of such employee at a particular place, if the administration finds that by allowing a particular employee at that place, the administration is not to suffer and the post which is vacant can be filled up by other employee available for such purpose. I find it proper not to conclude on the said aspects, leaving it to the administration to decide in a proper case, considering the facts and circumstances and rather the administrative exigencies for better administration of any institution or the statutory body.

15. Mr. Pathak, learned Counsel appearing for the petitioner, also submitted that even if such policy of the Government in the matter of allocation is to operate, then also the petitioner is not the junior most in the cadre of tracer and, therefore, she ought not to have been transferred or allocated to Narmada District Panchayat. He submitted that the seniority as per the roster is required to be maintained and not on the basis of the date of the appointment. He, therefore, submitted that if the seniority is maintained as per the roster and the petitioner being the only Scheduled Tribe employee, the petitioner cannot be said as junior most in the cadre of tracer and, therefore, the impugned order can be said as illegal.

16. On behalf of the respondents, the relevant extract of the seniority list is produced of the tracers which, inter alia, provides that the name of the petitioner is at serial No. 15 and her date of joining the service is 20.10.1989. Next to the petitioner is one Shri A.B. Vasava, who is at Sr. No. 16. However, it has been submitted on behalf of the respondents that the wife of the said employee is serving as a teacher in Primary School under the District Panchayat and, therefore, he has not been transferred. At Sr. No. 17, the name of Mr. A.S. Joshi is mentioned, who has been declared as surplus and is transferred and allocated to Surat. At Sr. No. 18, the name is of Mr. B.C. Vasava, who is Scheduled Tribe candidate and is transferred to Narmada District Panchayat and has joined at Narmada District Panchayat. Under the circumstances, as per the seniority list, it

appears that two employees namely; Mr. B.C. Vasava, who is also a Scheduled Tribe candidate and the petitioner who is also a Scheduled Tribe candidate are the junior-most in the list whose services are and can be allotted to Narmada District Panchayat as per the policy decision of the State Government.

17. The preparation of the seniority list on the basis of the roster point is an aspect which may have relevance for the purpose of further promotion and such promotion avenues cannot be equated in a matter where the junior-most employees are to be terminated or to be declared surplus or to be transferred by allocation of service in capacity as the junior-most employee. The last-come-first-go is a principle well known even in the matter of termination since the same rules out the arbitrariness by any employer in the matter of termination and to avoid the room for Spick and choose method. Therefore, if in a matter of allocation of service due to non-availability of sufficient number of candidates, the policy decision is taken for allocating the junior-most employee in a particular cadre for allocation of service, such an approach on the part of the Authority cannot be said as arbitrary on the ground that the seniority list is not prepared as per roster point. Had it been a case of further promotion avenues, it might stand on a different footing, but in the present case, the question is of allocation of services on formation of a new District and, therefore, Mr. Pathak is not right in contending that the seniority list is not correctly prepared for transferring the services of the petitioner, nor can it be validly contended that the seniority list in such matter is required to be prepared as per the roster point.

18. Mr. Pathak in furtherance to his submission also contended that the petitioner is the only Scheduled Tribe candidate in Bharuch District Panchayat and if the petitioner is transferred, may be by allocation of services, though his contention is Son deputation to Narmada District Panchayat, she will lose her further avenues for promotion and, therefore, it was contended that such may operate prejudice to the promotion avenues of the petitioner and, therefore, while preparing the seniority list, the roster point is required to be considered and the seniority list is required to be prepared as per the roster. I am afraid such contention can be accepted. The reason being that even if the petitioner is allocated to Narmada District Panchayat her lien continues in the Bharuch District Panchayat and it does provide with the enabling power with the State Government to review the allocation and re-allocation as per Section 231 of the Act. Therefore, if during that period of lien any further promotion avenue falls, the same may be pursued by the petitioner before the appropriate Authority, since right of lien is already provided. It is not the case of the petitioner that any post on the higher cadre has become due and the petitioner is to be selected for such purpose and, therefore, in my view, the said contention is also without any basis and hence the same cannot be accepted at this stage.

19. In view of the aforesaid I find that the order of the Authority allocating the service of the petitioner to Narmada District Panchayat cannot be said to be illegal. Hence, the petition fails for challenging the order of Authority for

allocating the services of the petitioner to the Narmada District Panchayat. Rule discharged accordingly. Interim relief, if any, stands vacated. However, it is made clear that in case the petitioner is seeking reallocation on account of her husband serving in LIC or due to availability of promotion avenues in the cadre of Bharuch District Panchayat for the post of tracer, the present order shall not operate as a bar and if such an application for reallocation is made after joining the duty at the transferred place, it would be open to the State Government to consider the matter in accordance with law, without being influenced by the observations made by this Court hereinabove.

20. Mr. Pathak, learned Counsel appearing for the petitioner prayed that the operation of the order be stayed for some time to enable his client to challenge the same before the higher forum as the petitioner is desirous to approach before the higher forum. As such, the stay has expired, but Mr. Pathak submitted that the petitioner is continuing even as on today.

21. Considering the facts and circumstances, as the right of the petitioner in the parent Department is continued even otherwise also, no serious prejudice will be caused to the petitioner if she is asked to work in Narmada District Panchayat and, therefore, considering the facts and circumstances the said request is rejected.