

(1999) 10 GUJ CK 0011
In the Gujarat High Court

Case No : Special Civil Application No. 10558 of 1998

Vijaysinh Bhamabhai Dodiya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Citation : (1999) 10 GUJ CK 0011

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : None, for the Appellant; Mukesh Patel, AGP for Respondent No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, Dr. V.B.Dodiya, Professor of Surgery in Medical Education by this writ petition under Article 226 of the Constitution of India challenges the order of respondent dated 26th November 1998, under which he was ordered to be transferred from M.P.Shah Medical College, Jamnagar, to Medical College, Bhavnagar (Government College).

2. This special civil application has come up for preliminary hearing in the court on 10.12.98 on which date, the matter was admitted and operation of the order of respondent dated 26th November, 1998 was stayed. On 11th March 1999, after hearing the learned counsel for the parties and perusing the counter affidavit, the court found that the Medical College at Bhavnagar is left without a Professor in Surgery for more than four months, this court has vacated the interim relief. The learned counsel for the petitioner prayed for continuation of interim relief for fifteen days but in view of the administrative exigencies expressed in the counter affidavit, that request was declined. Against the order of the learned single Judge dated 11th March 1999, the petitioner preferred L.P.A. No.309 of 1999 and the same came to be rejected on 30th March 1999. After the order of this court of granting interim relief in favour of petitioner, the respondent allowed him to join at Jamnagar vide office order dated 11th

December 1998 of the Dean, M.P.Shah Medical College, Jamnagar. After vacation of interim relief on 11th March 1999, the Dean of M.P.Shah Medical College Jamnagar, vide its letter dated 15th March 1999 instructed to relieve the petitioner to enable him to report at Medical College, Bhavnagar. The petitioner submitted an application on 16th March 1999 to the Dean, M.P.Shah Medical College, Jamnagar, and prayed therein for grant of sick leave from 12th March 1999 on the ground of sickness of mother and he further stated in the application that in his absence Dr.Sibu Chako will look after his work. This application appears to be also counter signed by that doctor. After dismissal of the L.P.A. the petitioner was instructed to implement the transfer order. He was requested vide letters dated 15th March 1999, 9th April 1999 and 7th May 1999, to report to the place of his transfer. Under the letter dated 7th May 1999 he was also directed to report to the Commissioner, Health Medical Services and Medical Education, Government of Gujarat. The petitioner reported to the Commissioner, Health, Medical Services and Medical Education, Gandhinagar, on 31st May 1999 with the submission that he is ready to join at the place where his services are required. The Commissioner, Health, Medical Services and Medical Education, on 31st May 1999, made a proposal to the State Government and the State Government issued order on 28th June 1999 asking the petitioner to report at Bhavnagar. The petitioner reported at Bhavnagar on 5.7.99. He has again proceeded on leave for one month on account of illness of his mother. Vide notice dated 30th July 1999 he was called upon to show cause why he has not jointed at the place of his transfer in time. Show cause notice was replied by the petitioner which was processed and the State Government has decided to initiate departmental inquiry against the petitioner. He was placed under suspension and chargesheet has also been served upon him. The petitioner has filed application for early hearing of this petition and hearing of this petition has taken place but nobody has taken care to appear on behalf of petitioner. List of dates and events has been furnished with necessary documents. The petitioner has given out that he submitted sick leave from 12.3.99. Sickness certificate and application was sent to Dean in prescribed form and to Gandhinagar on 16.4.99. No intimation with regard to not granting of the said sick leave either from any of the higher authorities has been received. The Dean of the faculty has relieved him on 15.4.99. So he has to forward application of sick leave either to Addl. Director or Dean, Bhavnagar Medical College as on 12th March 1999 to 15th March 1999. From 27.4.99 to 28.4.99, no order from the Government directing him where to join his duty was made. He submitted an application to the Addl. Director to grant leave from 12.3.99 to 26.4.99 and consider the period from 27.4.99 to 3.7.99 as on duty. On 5.7.88, he resumed duties at Bhavnagar which he admitted and from 6.7.88 to 5.8.99, he again applied for sick leave through telegram, prayed for extension of sick leave from 6.8.88 for fifteen days.

3. It is a case which clearly exhibits how an officer of the rank of Professor of Medical College disobeyed the orders of higher officers. From the facts of this case, I find that this application for leave by the petitioner was only a pretext,

otherwise, I have my own reservation about illness of his mother. Stay has been vacated on 11th March 1999 and from the very next date the petitioner applied for leave. This application is on the record which reads as under:

(ON LETTER HEAD)

11.3.99

To,

The Dean, M.P.Shah Medical College, Jamnagar.

Sub.: Sick Leave (Through proper channel)

Respected Madam,

Kindly grant me sick leave from 12.3.99 as my mother is sick. Necessary certificate and other forms will be submitted later on.

In my absence Dr.Shibu Chacko will look after my ward work.

Thanking you,

sd/- Yours sincerely, Dr.Shibu Chacko sd/- (V.B.Dodia)

This is nothing but only a concocted application on the face of it. The petitioner to create only a ground not to comply with the order of his transfer, had given this application. He has not mentioned for how many days he needs leave. One important thing is that he has handed over his charge to a Doctor of his choice and favour without there being any sanction of his leave etc. In the application it is not even mentioned from which ailment the mother was suffering. In the application any justification for this leave has also not been given out. The petitioner is a Professor in Medical College and his mother could have got best medical facility at Jamnagar or he could have taken his mother to Bhavnagar. It was not the case of illness but only a pretext or manufactured or concocted ground. The petitioner if really intended to join at Bhavnagar, then immediately on vacation of interim relief, he should have gone to Bhavnagar and joined the services. He has proceeded on leave from very next date so that he may prepare appeal and in case he is protected by grant of interim relief in L.P.A., he may continue at Jamnagar. This court, while vacating interim relief on 11th March 1999, specifically declined to grant any order in favour of petitioner to continue interim relief for fifteen days. These two things, i.e. prayer for extension of interim relief and on declining of the same, filing of application for leave, go to show that this application has been filed only for the reason that the court has not extended interim relief so as to get time to take chance of getting interim relief from Division bench in L.P.A. to be filed. This ground of illness of mother was not genuine ground. The petitioner submitted application for this leave in prescribed form on 16.4.99. His leave was not sanctioned. The petitioner, being an officer of the rank of Professor, should have proceeded on leave after sanction thereof more so, when from the record of this case seriousness of illness of the

mother to the extent where his total absence from duty was necessary was not made out. The L.P.A. was filed but interim relief was not granted by the court in his favour. Even after the dismissal of L.P.A., the petitioner has not proceeded to join at Bhavnagar. The application of petitioner dated 31st May 1999 to the Commissioner, Health, Medical Services and Medical Education, Gandhinagar is also very relevant which clearly shows that he was only interested to live at Jamnagar. This application reads as under:

(ON LETTER HEAD)

31/5/99

To,

The Commissioner Health, Medical Services & Medical Education (ME)
Gandhinagar

Ref.: Govt. Health and F.W. Dept. Letter No.MCG/1099-2200/(1)-V dated 7.5.99

R/Sir,

With reference to the above letter, I had reported vide my Regd. A.D. letter dated 13.5.1999 and also today in person. I therefore, request you kindly to issue necessary order for my posting at where my services are required.

To the best of my knowledge, the existing vacancy can be created at Jamnagar/Rajkot where the Professor of Surgery have been appointed on Contract basis. I therefore request you to post me at Jamnagar on such a resultant vacancy.

Thanking you,

Yours faithfully, sd/- (Dr.V.B.Dodia)

Copy submitted to:

1. The Principal Secretary, health & F.D. Department, Gandhinagar
2. The Addl. Director of Medical Education & Research Gandhinagar

4. It is really shocking that despite of all this, i.e. vacation of interim relief earlier granted in Special Civil Application and dismissal of L.P.A., he is insisting for his posting at Jamnagar. The officers of the State Government at Gandhinagar have also favoured him to certain extent. Ultimately though he joined at Bhavnagar, but from the very next date thereof, he proceeded on leave without getting prior sanction of the leave.

5. In the matter of transfer of Government officer, this court has very very limited power of judicial review. Order is subject to judicial review only on two grounds, namely, where it is made as a result of malafide exercise of powers or where it is made in violation of some statutory provisions. Reference here may have to the decision of the apex court in the case of Union of India v. S.L.Abbas reported in JT 1993(3) SC 678. The learned counsel for the petitioner has failed

to make out any case of malafides. It is also not the case of petitioner that this order has been passed in violation of some statutory provisions. After going through the contents of the special civil application, I do not find anything from which this order may be taken to be as a result of malafide action on the part of State Government but it is a routine transfer. The petitioner, for all the time to come cannot continue at one place. The petitioner was at Jamnagar for all those years and if after working there for many years, he has been transferred, how far it is justified on his part to challenge that order. Utmost important thing is study of students and not what the petitioner is claiming for himself. Where the Government considers that the petitioner has to now be posted at Bhavnagar, considering the petitioner to be of that much of merits, his services are to be utilized at that place, it is his duty to comply with this order rather than to challenge the same in court. Not only on merits, on his conduct also, this writ petition deserves to be dismissed. The petitioner has acted in this case worse than what it is even not expected from the class-III and class-IV employees in Government services. He is a medical person and even if his mother was really sick, he would not have any difficulty or his family to get medical facilities at doorstep. He has not disclosed about illness and the condition of his mother in the application submitted by him from time to time which goes to show that it was only a manufactured or creation or concocted ground to evade joining at Bhavnagar. The petitioner, on his transfer from Jamnagar to Bhavnagar, may have three options. First was to forthwith comply with the order of his transfer by proceeding and joining at Medical College, Bhavnagar. Second option was to challenge this order before the appropriate legal forum available and in case stay has been granted in his favour, there may be justification with him to continue at Medical College, Jamnagar. Third option was to make representation against this order if he has some difficulties to carry out the same to the higher authorities. In case higher authorities ordered to keep this order in abeyance or to stay operation of the order, there may be some justification to his action to continue at Medical College, Jamnagar. In this case, the petitioner has opted for second option and so long as stay order continued in his favour, he could have continued at Jamnagar but moment the stay order is vacated, he has to respect the order and should have proceeded to join at Bhavnagar rather than to justify non compliance of this order under the application for leave on the ground of illness of his mother. LPA was dismissed on 30th March 1999 and still thereafter he has not cared to join at Bhavnagar. Even if it is taken that his mother was ill, I fail to see any justification in his action to proceed on leave more so without prior sanction of it. It is not a bonafide act on the part of the petitioner but an attempt on concocted and manufactured ground to avoid his transfer from Jamnagar to Bhavnagar. The petitioner has no justification whatsoever not to comply with this order and more so even where from time to time he was asked to join at Bhavnagar by the officer of the State Government. By not complying with the transfer order, the petitioner exposed himself to disciplinary action and rightly the respondents proceeded and initiated disciplinary action against him and he has been placed under suspension.

6. Mr.Mukesh Patel, learned counsel for respondent-State has given out that even after suspension the petitioner has not acted bonafidely. Reference here may have to the two decisions of the apex court in the case of Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, and in the case of Union of India v. S.L. Abbas (supra). Taking into consideration the totality of the facts of the case, more particularly the conduct of the petitioner, no interference is called for in the matter.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.1,000/= as costs of this petition to the State of Gujarat.