

Gujarat High Court

Rb vs State on 29 August, 2008

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Gujarat High Court Case Information System

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SCA/10/2000 7/ 7 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL

CIVIL APPLICATION No. 10 of 2000

For
Approval and Signature:

HON'BLE
SMT. JUSTICE ABHILASHA KUMARI

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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RB
PATEL SENIOR CLERK - Petitioner(s)

Versus

STATE
OF GUJARAT, THROUGH ADDITIONAL ENGINEER & 1 - Respondent(s)

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Appearance :
MR
RA PATEL for Petitioner
Mr.K.L.Pandya, learned Assistant Government
Pleader for
Respondents

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CORAM

:

HON'BLE

SMT. JUSTICE ABHILASHA KUMARI

Date
: 29/08/2008

ORAL
JUDGMENT

1. This petition has been filed by the petitioner, with the following prayers:

(A) Your Lordships be pleased to issue a writ or order or direction, quashing the impugned order at Annexure :A dated 2nd November, 1999 (B) Your Lordships be pleased to stay the implementation of the order dtd.2nd November, 1999 and direct the Executive Engineer, Medium Irrigation Scheme, Ankleshwar, not to relieve the petitioner from the Post of Senior Clerk;

(C) Pending admission, hearing and final disposal of this petition; grant such other and further relief/s that may be deemed fit and proper in the facts and circumstances of the case in the interest of justice.

2. The brief facts of the case, as emerging from a perusal of the averments made in the petition, are that the petitioner, who was at the relevant period of time, serving as Senior Clerk at Ankleshwar, was transferred by the impugned order dated 2-11-1999, to Palanpur. According to the petitioner, Palanpur is at a distance of more than 400 Kms. from Ankleshwar and since, the transfer has been made in the academic term of the children of the petitioner, he is put to great hardship and, therefore, the impugned order deserves to be quashed and set aside.

3. Mr.R.A.Patel, learned counsel for the petitioner, submits that even though the impugned transfer order has been issued under the pretext of administrative exigency, the said order has caused hardship to the petitioner, who has two daughters and one son, who were studying in College and School and, therefore, it is very difficult for the petitioner to move from one place to the other. It is further alleged that the transfer has been made on the basis of a vague letter written by someone else, whose interest is not being fulfilled by the petitioner and, therefore, the impugned order of transfer has not been passed on the ground of administrative exigency and is liable to be quashed and set aside.

4. An affidavit-in-reply has been filed by the respondent No.2 wherein it is stated that the allegation that the transfer of the petitioner has been effected due to some vested interest is wrong and misleading and is not supported by any material on record. It is further stated that the transfer of the petitioner has been effected due to administrative reasons and as far as the academic term of the children of the petitioner is concerned, the court has taken care of the same by passing order dated 15-2-2000.

5. I have heard Mr.R.A.Patel, learned counsel for the petitioner and Mr.K.L.Pandya, learned Assistant Government Pleader for the respondents.

6. It is relevant to notice that this court (Coram:Miss.R.M.Doshit,J) by order dated 15-2-2000 has directed that the implementation and operation of the impugned order of transfer dated 2-11-1999 shall remain stayed till 30-4-2000. A perusal of the order of the court shows that it has been passed keeping in mind the fact that the transfer of the petitioner has been made in the midst of the

academic term, which will adversely affect the education of his children. It has been categorically stated in the said order that the implementation of the transfer order shall remain stayed till 30-4-2000, meaning thereby that the respondents shall permit the petitioner to resume duty at Ankleshwar, restoring the status quo ante, till 30-4-2000. Mr.K.L.Pandya, learned Assistant Government Pleader has produced a copy of the order dated 29-4-2000 issued by the respondent No.2 whereby the petitioner has been directed to join his duties at Palanpur, on 1-5-2000.

7. It is a settled position of law as held by the Supreme Court in Union of India v. S.L.Abbas, AIR 1993 SC 2444 that Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. Transfer is an incidence of service and the employer is the best person to decide where the services of the employee are to be placed. As long as the transfer of the employee is not in violation of any statutory rule or motivated by malafide intention, the courts, normally, shall refrain from interfering with the same. In the present case, although vague allegations of malafide have been raised but, they are totally un-substantiated and there is no material on record to show that the transfer of the petitioner has been effected for any reason otherwise than that of administrative exigency.

8. The main thrust of the argument of the learned counsel for the petitioner is that the place of transfer i.e. Palanpur is 400 Kms. away from Ankleshwar and the impugned order of transfer will disturb the education of his children as it has been made in the midst of the academic session. As has been noticed above, this Court by order dated 15-2-2000 has taken care of the situation and has directed that the implementation of the impugned order of transfer shall remain stayed till 30-4-2000. By efflux of time, the impugned order no longer survives and, as is clear from order dated 29-4-2000, whereby the petitioner has been directed to join at Palanpur on 1-5-2000. The petitioner has no vested right to remain posted at a particular place, especially as the reason for impugning the transfer that is the mid-academic sessions of his children, no longer survives. There is no merit in the petition which deserves dismissal.

9. It is, accordingly, dismissed. Rule is discharged. There shall be no order as to costs.

(Smt.Abhilasha Kumari,J) arg Top