

State of Gujarat

Vs

S. Tripathy and Others

Civil Appeals Nos. 2796-97 of 1985

(O. Chinnappa Reddy, V. Khalid, S. Natarajan JJ)

14.03.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. The State of Gujarat is the appellants in these two appeals by special leave. As the arguments proceeded, it became clear to us that the appeals had been filed more to vindicate Mr H.K.L. Capoor, who was previously Chief Secretary to the Government of Gujarat and against whom certain caustic observations had been made by the High Court of Gujarat, rather than for a decision on the merits of the case. In fact, Shri S.T. Desai, learned senior advocate appearing for the State of Gujarat, told us that the State of Gujarat was prepared to abide by the directions given by the High Court of Gujarat in its judgment. We should add that during the pendency of the writ petitions in the High Court, the respondent apparently in sheer frustration, resigned from service.

2. The respondent, S. Tripathy, was recruited to the Indian Administrative Service in 1966 and allotted to the State of Gujarat. His case was that when he was working as an Assistant Collector at Petlad in August 1968, he earned the displeasure of Shri Madhav Sinh Solanki, a Member of the Legislative Assembly, who later became the Chief Minister of Gujarat, as he did not oblige Mr Solanki's father-in-law in some matter. He further stated that he similarly earned the displeasure of Shri H.K.L. Capoor as he refused to oblige him in connection with the grant of some land in Rajkot District to the relative of Mr Capoor. It was stated by the respondent in the writ petitions that Shri Capoor was Establishment Officer to the Government of India at that time and that he tried to bring pressure on the respondent through the Collector, Shri Ramakrishnan. Shri H.K.L. Capoor later became Chief Secretary to the Government of Gujarat. According to the case put forward by the respondent at the hearing of the writ petitions in the High Court, Shri Capoor was prejudiced against him and so, year after year, in his confidential reports, he would repeat the observations "not yet fit for promotion" and "needs to be watched", despite the good remarks and satisfaction earned by the respondent from other superior officers. He was passed over for promotion to the Selection Grade on August 21, 1980 and March 6, 1981 by the Selection Committee presided over by the Chief Secretary, Shri H.K.L. Capoor. When he was passed over for promotion to the Selection Grade on August 21, 1980, he questioned the action of the government by filing Special Civil Application No. 3410/80 in the High Court of Gujarat. The Selection Committee which met on July 28, 1981, December 29, 1981 and May 4, 1983 deferred the question of promotion of the respondent to the Selection Grade. The question of promoting him to the super time scale was not considered as he had not yet been promoted to the Selection Grade. On February 1, 1984, the respondent was promoted to the Selection Grade with effect from April 1, 1983. On June 28, 1984, the Selection Committee decided that he was not fit for promotion to the super time scale whereupon he filed Special Civil Application No. 3452 of 1984. He resigned from service with effect from July 24,

1984 as he thought that he had been dealt with unfairly by the government by being denied promotion to the super time scale, which was due to him since a long time. The High Court referred to the several confidential reports in which Shri Capoor had made the remarks "not yet fit for promotion" and "needs to be watched" and found that there was no basis for the remarks made by Shri Capoor. The High Court found that the earlier decision to deny and defer giving the Selection Grade to the respondent and the decision to deny super time scale to the respondent were swayed by extraneous considerations. Both the writ petitions were, therefore, allowed and the State of Gujarat was directed to consider afresh the question of the promotion of the respondent to the Selection Grade as well as to the super time scale and give the respondent the monetary benefits to which he would be entitled on such fresh consideration. The State of Gujarat obtained special leave from this Court under Article 136 of the Constitution and has preferred the present appeals.

3. In the High Court, no affidavit was filed by Shri Capoor and the allegations made against him went unanswered. When the learned judges of the High Court repeatedly asked the Advocate-General of the State whether there was any material with the Chief Secretary when he made the remarks in the confidential reports that the respondent was not yet fit for promotion and that he needed to be watched, the Advocate-General repeatedly told the court that there was no other material apart from the confidential reports. It was in those circumstances that the High Court came to pass sever strictures against Shri H.K.L. Capoor. It was only then that realisation appears to have dawned on the authorities concerned that an affidavit should have been filed by Shri H.K.L. Capoor explaining how and why he came to make the remarks which he made in the respondent's confidential reports. The State of Gujarat filed special leave petitions and also sought the permission of the court to file the affidavit of Shri Capoor. Permission to file the affidavit was granted by this Court on March 13, 1985 and as many as four affidavits have since been filed by Shri Capoor in this Court. The latter affidavits have apparently been filed to counter or deny the allegations made by the respondent in answer to Shri Capoor's first and second affidavits. In the first of the affidavits of Shri H.K.L. Capoor, he has tried to explain why he did not file an affidavit in the High Court. According to him, though the government had long ago decided to file a counter-affidavit, such an affidavit was actually prepared and filed in the court in November 1984, but that was several months after he had demitted office as Chief Secretary on September 30, 1983. That was why it happened that no affidavit was filed by him. It is surprising that in a matter like this, the State of Gujarat and its officers did not think it worthwhile filing a counter until four years after the first writ petition was filed, although they knew that serious allegations had been made by the respondent. That Shri H.K.L. Capoor was aware of the serious nature of allegations made against him has been admitted by him in his affidavit. It appears to us that the Government of Gujarat and its officers took the matter very lightly and were so indifferent that they did not bother themselves about the writ petitions until the petitions actually came up for hearing before the High Court. Even then no serious attempt was made to file the affidavit of Shri H.K.L. Capoor or at least to place the entire material before the court through the Advocate-General. In the affidavit dated April 17, 1984 filed by Shri H.K.L. Capoor, apart from stating that the two persons who were said to be his relatives and on whose behalf he was alleged to have intervened in the matter of assignment of land, were not known to him at all and that he never tried to influence the respondent through the Collector, Shri Ramakrishnan, Shri Capoor has also stated that he had made the remarks "not yet fit for promotion" and "needs to be watched" as he was bound to do view of certain allegations against the respondent which were pending investigation either with the Anti-Corruption Bureau or with the Vigilance Commission. Shri Capoor stated that in such situations, those were the remarks that had to be made according to the guidelines issued by the Government of India. He stated that at that time, he had received two secret notes from Shri Rama Murti and Shri Jagad, Secretaries to the Government of

Gujarat mentioning about the allegations against the respondent. The decision to refer the allegations to the Anti-Corruption Bureau and to the Vigilance Commission was taken by Shri A.N. Banerjee, Adviser to the Governor and Shri Babu Bhai J. Patel, Chief Minister. Shri Capoor also pointed out that the remarks made by him in three of the reports were made on the same day though they related to different periods. This happened to be so because the reviewing officer in regards to the reports was the same, though the reporting officers were different and all the reports were put up to Shri Capoor on the same day. He could not possibly record different remarks on the same day. Shri Capoor also stated that the representations made by the respondent to the President of India against the remarks made in the later years, were rejected. It was further stated by him that he was not the only member of the Selection Committee. There were two other members and the recommendations in Shri Tripathy's case were unanimous on all occasions. Shri Capoor stated that if the material which he was placing before us had been placed before the High Court, "the harsh observations" against him might not have been made in the judgment.

4. Shri Tripathy, who, we must say, argued his case with ability, drew our attention to the confidential reports in great detail, as also to other relevant records. He submitted that the so-called allegations which were referred to the Anti-Corruption Bureau and the Vigilance Commission were frivolous, that the mere pendency of the investigations and enquiries should not have been allowed to stand in the way of his promotion, that in fact other officers were promoted notwithstanding the pendency of enquiries against them and that the instructions of the Central Government did not permit the Chief Secretary to make the remarks that he did merely because some investigations or enquiries were pending against him. We are not now concerned with the question of the interpretation of the Government of India's instructions regarding the writing of confidential reports or the nature of the allegations which were referred to the Anti-Corruption Bureau and the Vigilance Commission. We are clear in our minds that no justifiable grounds have been made out warranting an interference under Article 136 of the Constitution with the conclusion of the High Court that there was no material to warrant overlooking the respondent for promotion to the Selection Grade and super time scale. We propose to consider the limited question whether Shri H.K.L. Capoor acted bona fide and whether the High Court would or would not have passed the strictures that it did against Shri Capoor in its judgment, if the affidavit now filed before us by Shri Capoor was before the High Court. We do think that there is no reason to doubt the bona fides of Shri Capoor and we agree with the statement in the affidavit of Shri Capoor that the High Court might not have passed the strictures had the affidavit of Shri Capoor been before them. We do not desire to launch into a discussion of the various submissions made by Shri Tripathy as we are generally satisfied about the bona fides of Shri Capoor. We, however, hasten to add that we do not thereby mean that Shri Tripathy was rightly passed over for promotion to the Selection Grade and to the super time scale. We agree with the High Court that Shri Tripathy was wrongly passed over. However, instead of directing the Government of Gujarat to consider afresh the claim of Shri Tripathy for promotion to the Selection Grade and the super time scale, we declare that the respondent should have been given Selection Grade with effect from March 6, 1981 (the date from which the High Court observed that he ought to have been given such promotion) and the super time scale with effect from November 1, 1983 and direct the Government of Gujarat to give the consequential monetary benefits. Subject to these observations and directions, the appeals filed by the State of Gujarat are dismissed with costs which we quantify at Rs 5000 in each case. In view of what we have said about the bona fides of Shri H.K.L. Capoor, we do not think that it is necessary to pass any separate orders in the application for expunging remarks.

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