

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2846 of 1985

with

SPECIAL CIVIL APPLICATION No 4036 of 1989

Date of decision: 28-11-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

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?

DR. B R DEUVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2846 of 1985
MR JITENDRA M PATEL for Petitioner
Mr. H. L. Jani for Respondent No. 1
MR MANISH R BHATT for Respondent No. 3

2. Special Civil Application No 2082 of 1985

Mr. M. R. Bhatt for the petitioner.

Mr. Jitendra M. Patel for respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/11/97

ORAL JUDGEMENT

The petitioner, a tutor in B. J. Medical College, Ahmedabad, has filed this special civil application No.2846 of 1985 and prayer has been made for issuance of a writ of mandamus or any other writ, order or direction, quashing and setting aside the Resolution dated 7th February, 1984 and for restraining respondents No.1 and 2 from placing respondent No.3 as senior to the petitioner in the cadre of Assistant Professor. Under resolution annexure-A dated 7th February, 1984 the posts of Assistant Professor, G.P.H.S. Class I sanctioned for the post partum units at the four Government teaching hospitals viz., B.J. Medical College & Hospital, Ahmedabad, Medical College & S.S. General Hospital, Baroda; M.P. Shah Medical College & I. G. Hospital, Jamnagar; and Government Medical College & Hospital, Surat, were given the cadre of Assistant Professor of Obstetrics & Gynecology, G.S.S. Class -I on Medical Education Side. The petitioner has made grievance that this encadrement of the post of Assistant Professor, G.P.H.S. Class I into the cadre of Asst. Professor of Obst. & Gynecology on medical Education side will adversely affect the petitioner's seniority and consequent chances of further promotion. Respondent No.3 contested this special civil application by filing reply to the same. The counsel for both the parties have made manifold contentions in respect of their cases. But I do not consider it necessary to advert to all the contentions, as in my considered opinion this writ petition deserves to be dismissed only on the ground of conduct of the petitioner.

2. The petitioner and respondent No.3 both were selected for the post of Professor in the discipline of Obst. & Gynecology on being selected by the Gujarat Public Service Commission. The petitioner was placed in the merit list at serial No.11, whereas respondent No.3 was placed at serial No.7. Respondent No.3 filed special civil application No.4036 of 1989 before this Court and

prayer has been made for her appointment to the post of Professor in B.J. Medical College on and with effect from 1-7-1989, and the selection made by the G.P.S.C. has been questioned.

3. During the pendency of the aforesaid special civil applications, the petitioners were given appointment on the post of Professor, but not at Ahmedabad. Both these doctors do not want professorship, but they are more concerned with the place, i.e. Ahmedabad. Dr. (Mrs.) M. B. Shah was posted at Medical College, Bhavnagar, whereas Dr. B.R. Leuva was posted at Medical College, Vadodara. Copy of the Government Resolution passed in this regard has been produced in court and the same is taken on record of the special civil application. Both these doctors declined to accept the post of Professor. When these persons were given appointment on the post of Professor and they have not accepted the posting only for the reason that they have been posted elsewhere than Ahmedabad, they are not interested in seniority, but they really want place of posting of their choice. The matter would have come to an end if both the doctors would have accepted the appointment as Professor, but still they have not accepted the appointment. This court will not permit them to continue with these petitions. Only on this conduct of these petitioners, both the petitions deserve to be dismissed, and accordingly both the petitions are dismissed.

4. Before parting with this judgment I consider it necessary to observe that for all Class I service including judicial service, administrative service or other service, normally an officer is allowed to continue at one place for a period of three to five years. But so far as doctors, and particularly teachers in Medical Education, it is not unknown that they stick to one place for years together. In fact in case of doctors, and particularly teachers in medical education no exception should be taken in their case. Continuation of a doctor - teacher in medical education at one place gives rise to encouragement of private practice. Otherwise also, looking to the calibre of a doctor-teacher in medical education, in the interest of students in medical colleges also, that the teachers are posted at different medical colleges for a reasonable period. It is true that where their spouse are also in service, care can be taken by posting both of them at one place. A copy of this order be sent to the Chief Secretary of the State Government with direction to let this court know what ultimately the Government has

decided in this matter. Whatever decision taken in this case shall be produced before this court within a period of six months.

5. Rule discharged in both the petitions. Interim relief granted earlier stands vacated. No order as to costs.

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