RASESH C. CHOKSI

v.

THE STATE OF GUJARAT & OTHERS

November 4, 1977

[S. MURTAZA FAZAL ALI AND JASWANT SINGH, JJ.]

Rules governing the appointment of Registrars and Housemen at the Government Medical Colleges and attached teaching hospitals framed by the Government of Gujarat in Resolution No. MCG-1074-5100(N) Panchayat and Health Deptt. dt. 7-8-75—Interpretation of Rule 23—*Whether the word "leave" in Rule* 23 *a "noun" or a "verb" and whether acts as a bar for consideration for appointment.*

The appellant who had a special interest in Obstetrics and Gynaecology for want of a vacancy in that department joined initially as a Registrar of Anaesthesia and gave an undertaking to serve in that capacity for a period of one year as per the rules then existing. Though the tenure of the post was extended to two years instead of one, later on, the department did not take any undertaking from the appellant to serve the entire period. Rule 23 of the "Rules governing the appointment of Registrars and Housemen in the Government Medical Colleges and attached Teaching Hospitals" lays down that "the candidates who are appointed on any of the resident posts and leave without completing the tenure of their appointment shall not be considered in future for the post of Registrar". When the appellant applied for the post of the Registrar (Obstetrics and Gynaecology) his application on a wrong interpretation of rule 23 and on the ground that the appellant had not completed his two years' tenure as Registrar of Anaesthesia, was not considered and respondent No. 4 was appointed. The Gujarat High Court summarily dismissed the writ petition challenging the said appointment of respondent No. 4 and the view taken by the department.. A Letters Patent Appeal preferred against the said dismissal also failed.

Allowing the appeal by special leave, the Court

HELD : (1) In order to understand the real purport and import of the word "leave" it is difficult to lay down any proposition of universal application. In the English language there are a number of words which can be used as Noun and also as Verb and more often their meanings are different when they are used as Noun from those when the words are used as Verb. The court has to determine the meaning having regard, first to context and the setting in which the word has been used; and secondly the court has to consider whether the word "leave" has been used as a noun or a verb. [812 D-E]

(2) The word "leave" used in Rule 23 has been used not as a noun but as a verb. If used as a verb the word "leave" postulates that the candidates must have left or forsaken the job for ever and ceased to remain in service in which case alone he would not be considered for promotion. [813 E-F]

(3) What Rule 23 contemplated was not that a person while in service should be debarred from applying for a higher post so long as he did not complete the tenure for which he was appointed. Rule 23 does not appear to require any causal connection between the promotion to higher job and the tenure of the service of the candidate concerned. It merely signifies that those candidates who choose to relinquish the service once for all and cease to be in the department would not be considered for higher promotion. The rule making authority intended to impose a penalty on a person, who in the midst of a job chooses to quit the same for ever by refusing to consider his case for promotion to a higher job which appears to have been confined only to those candidates who are serving the department and not those who had left the service.

In the instant case the mere fact that the appellant applied for the job of Registrar of Obstetrics and Gynaecology would not amount to his leaving the post which he was holding although with the permission of the department

so as to fall within the mischief of Rule 23. Rule 23 does not act as a bar to the appointment of the appellant as Registrar of Gynaecology. [813 F-H, 814 A]

[The court directed the respondents Nos. 1 and 2 to consider the case of the appellant and if he is appointed, revert respondent No. 4.] 814 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1040 of 1977.

Appeal by Specpial Leave from the Judgment and Order dated 19-1-177 of the Gujarat High Court in L.P.A. No. 11/77.

S. K. Dholakia and *R. Ramachandran* for the Appellant.

D. V. Patel, Girish Chandra for Respondent No. 1.

P. H. Parekh and *Miss Manju Jetley* for Respondent No. 4.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against the judgement of the Division Bench of the Gujarat High Court dated 19th January, 1977 dismissing the Letters Patent appeal filed by the appellant against the judgement of a Single Judge of the Gujarat High Court which summarily dismissed the petition filed by the appellant under Article 226 of the Constitution. The High Court appears to have non.-suited the appellant on the interpretation of Rule 23 of the Rules Governing the Appointment of Registrars, which, according to the High Court, made the appellant ineligible for being considered for the post of Registrar obstetrics & Gynaecology.

The facts of the case lie within a narrow compass and may be briefly stated thus :—

The appellant after a brilliant academic career passed the S.S.C. examination in 1967 standing 9th in the entire Province of Gujarat. He thereafter joined the Medical College at Surat and passed the final M.B.B.S. examination from the South Gujarat University in October, 1973 in all the subjects in the first attempt securing as high marks as 133 in Obstetrics and Gynaecology. Thereafter the appellant completed the period of Internship in 1974 and was appointed as a Houseman in Obstetrics and Gynaecology from 1st January, 1975 to 15th January, 1976. The appellant claims that he had a special interest in Obstetrics and Gynaecology and pursued the post-graduate studies in the subjects. It was in connection with the pursuit of these studies that the appellant wanted to serve as a Registrar in the Department of Obstetrics and Gynaecology whenever such vacancy fell.

When the appellant was apointed as Registrar of Anaesthesia he accepted the same in the hope that this will be a stepping stone in his further promotion as Registrar in the Department of Obstetrics and Gynaecology which post had not fallen vacant till that time. On joining the post of the Registrar of Anaesthesia he gave an undertaking to serve in that capacity for a period of one year. Later on the 15th March, 1976 the appellant received a communication that the term of his tenure was extended to another year, that is to say. that the tenure in the post was extended to two years instead of one.

Even though the tenure in post was extended for two years the Department did not take any undertaking from the appellant to serve for the entire period. A

In response to an advertisement for the post of Registrar of Obstetrics and Gynaecology which fell vacant with effect from 1st January, 1977 the appellant along with others applied for the aforesaid job. The applications of the appellant and others were forwarded by the Dean to the Director of Medical Education and Research. But the Director was of the opinion that none of the applicants were eligible for the post of Registrar of Obstetrics and Gynaecology, because they had not completed the full tenure in the present post of Registrar. As a result of this decision of the Director, the application of the appellant was not considered nor was he called for an interview. Subsequently, respondent No. 4 was appointed as Registrar of Obstetrics and Gynaecology. The appellant contended before the High Court that he fulfilled all the conditions required for the appointment of Registrar of Obstetrics and Gynaecology and the Director on a wrong and erroneous interpretation of Rule 23 appears to have been of the view that the appellant was not eligible. The appellant having failed to get any redress from the Department filed a writ petition challenging the order of the Director of Medical Education dated 14th December, 1976 and prayed for a writ for directing the Director of Medical Education to appoint the appellant to the post of Registrar of Obstetrics and Gynaecology. B C D

The High Court of Gujarat was of the opinion that in view of rule 23 since the appellant had not completed the period of two years as Registrar of Anaesthesia and had applied before the expiry of the period, he could not be considered for appointment to the post of Registrar of Obstetrics and Gynaecology in view of the bar contained in rule 23. E

Thus, the entire fate of this case depends on the true and proper interpretation of rule 23 and particularly the word "leave" mentioned therein. After having failed in the High Court, the appellant applied for leave to appeal to this Court which being refused, the appellant moved this Court for special leave which was granted and hence this appeal. F

It was common ground that the appellant had fulfilled all the necessary qualifications for the post of Registrar of Obstetrics and Gynaecology and if the bar of rule 23 was not applicable then there was absolutely no hurdle in the way of the appellant for being appointed to the said post of Registrar. The main bone of contention between the parties has been the interpretation of rule 23. According to the appellant, on a proper interpretation of rule 23 it did not debar him from seeking the post of Registrar, Obstetrics and Gynaecology. The stand taken by the respondent, however, was that rule 23 completely debarred the appellant from applying or for being considered for the post of the aforesaid Registrar. G H

In order to appreciate the arguments we may extract rule 23 in extenso :

A

"The candidates who are appointed on any of the Resident posts and leave without completing the tenure of their appointment shall not be considered in future for the post of Registrar."

The interpretation of rule 23 would depend on the meaning and import of the word 'leave' appearing therein. The stand taken by the respondent is that the action on the part of the appellant in applying for the post of Registrar of obstetrics and Gynaecology would amount to leaving the tenure of his appointment as Registrar of Anaesthesia even before the period was over, and, therefore, he was not entitled to be considered for the post of Registrar of Obstetrics and Gynaecology. Learned counsel appearing in support of the appellant submitted that the word "leave" should be construed in its ordinary grammatical sense and would not indicate that a mere application by the appellant for a higher job would amount to forsaking or leaving the job held by him alltogether. Counsel for the respondent, however, submitted that the word "leave" includes leaving the job with the permission of the department even with the intention of securing a higher promotion, and does not only imply quitting or giving up the job for ever. It is manifest that in order to understand the real purport and import of the word "leave" it is difficult to lay down a proposition of universal application. The Court has to determine the meaning having regard first to the context and the setting in which the word has been used, secondly, the Court has to consider whether the word "leave" has been used as a noun or as a verb. In the English language there are number of words which can be used as noun and also as verb and more often than not their meanings are different when they are used as noun from those when the words are used as verb.

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In the instant case. having regard to the language of rule 23 doubtless the word "leave" has been used as a verb and not as a noun. Taking the word in its ordinary parlance if used as a verb it clearly connotes that the candidate should have given up the job or quitted the service or severed all connections with the post that he was holding. If the word "leave" would have been used as a noun in the sense of obtaining leave or furlough then the concept of permission would undoubtedly have to be considered.

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In Black's Law Dictionary, Revised Fourth Edition at p. 1036 the author referring to the case of *Landreth* v. *Casey* 340 111.519; 173 N.E. 8485 observes as follows :—

G

"Wilful departure with intent to remain away, and not temporary absence with intention of returning."

To the same effect is the definition of the word "leave" when used as a verb in Webster's New International Dictionary at p. 1287 where it has been defined as meaning "desert, abandon, forsake, to give up the practice,, to quit service and the alike."

H

In Webster's New World Dictionary at p. 834 the word "leave" when used as a verb has been defined thus :

"To go away from, to give up, abandon, forsake, to stop working for, depart or set out."

In the Concise Oxford Dictionary the word "leave" has been defined as "Quit, go away from, depart." A

Similarly in Shorter Oxford English Dictionary, Vol. I at p. 1122 the word "leave has been defined when used as a verb as 'to depart from, quit, relinquish, to go away from permanently, to abandon, forsake, to cease, desist from, stop". B

In The Random House Dictionary of the English Language at p. 816 the word "leave" has been defined when used as a noun as "permission to do something, to beg leave to go elsewhere, permission to be absent as from duty," when used as a verb it means "a parting, departure, farewell." C

In Stroud's Judicial Dictionary, Third Edition, p. 1606 when used as a verb 'leave" means "going away from, depart, sail".

Aiyar in Law Lexicon of British India at p. 715 observes as follows :

"Leave, as a noun, permission. As a verb, according to the context or the intent with which it is employed the word may mean to abscond; to deliver, to depart, to get off; to give; to go away from, to quit." D

Having regard to the definition of the word "leave" when used as a verb in the aforesaid authentic legal dictionaries we have no doubt that the word "leave" used in rule 23 has been used not as noun but as a verb. E If used as a verb the word "leave" postulates that the candidate must have left or forsaken the job for ever and ceased to remain in service, in which case alone he would not be considered for promotion to the post of Registrar of Obstetrics and Gynaecology. It seems to us that the rule making authority must have intended to impose a penalty on a person, who in the midst of a job which he is doing chooses to quit the same for ever, by refusing to consider his case for promotion to a higher job F which appears to have been confined only to those candidates who were serving the department and not those who had left the service. In other words, what the rule contemplated was not that a person while in service should be debarred from applying for a higher post so long as he did not complete the tenure of the period for which he was appointed. Rule 23 does not appear to require any causal connection between the promotion to higher job and the tenure of the service of the candidate G concerned. It merely signifies that those candidates who choose to relinquish the service once for all and cease to be in the department would not be considered for higher promotion. It is nobody's case that the appellant at any time expressed his desire to give up or relinquish the service or had resigned the same in order to apply for the job of Registrar of Obstetrics and Gynaecology. On the other hand, the appellant was very much serving as Registrar of Anaesthesia when he applied for H the job of Registrar of Gynaecology. Once he was in actual service the question of leaving the service as contemplated by rule 23 did not arise at all. Our attention has not been drawn to any provision in rule 23

A or any other rule which provides that unless the candidate concerned has completed the period of two years he would be completely debarred from applying for the post of Registrar of Gynaecology. We do not agree with counsel for the respondent that the combined effect of rule 16 and rule 23 contains such a bar. This argument is really based on an erroneous interpretation of rule 23 which has no nexus with 16 at all. For these reasons, we are unable to agree with counsel for the B respondent that the mere fact that the appellant applied for the job of Registrar of Obstetrics and Gynaecology would amount to his leaving the post which he was holding although with the permission of the department so as to fall within the mischief of rule 23.

The undisputed facts are that the appellant obtained the highest marks in M.B.B.S. examination in Gujarat and had passed in all the sub- C jects. It is also not disputed that the appellant's name was mentioned in the merit list. The only ground on which the appellant was not considered for promotion was the opinion of the Director of Medical Education based on a wrong interpretation of Rule 23 and particularly of the word "leave." It is, therefore, clear that the appellant though fully qualified for the post of Registrar of Obstetrics and Gynaecology was not considered, because of an error of law committed by the Director D of Medical Education. As the appellant was not considered for promotion, respondent No. 4 was appointed. It is obvious that if the appellant's case was duly considered he was bound to be appointed as respondent No. 4 was undoubtedly inferior in merit to the appellant. The rules placed before us lay down that the appointment to the post of Registrar of Obstetrics and Gynaecology must be made on merit and merit alone. It is true that if this appeal was to succeed, respondent No. E 4 would have to be dislodged causing some hardship to her, but as she secured an appointment under a mistaken impression of law by the authorities, her reversion cannot be helped. The fact however remains that she has already done more than 1½ years as Registrar of Gynaecology and it will not be unjust for her to make way for the appellant who is definitely a more suitable and more meritorious candidate for the post of Registrar of Gynaecology.

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For these reasons, therefore, we are unable to agree with the view taken by the High Court that rule 23 acts as a bar to the appointment of the appellant as Registrar of Gynaecology. We, therefore, allow the appeal of the appellant and set aside the judgment of the High Court and direct respondents No. 1 and 2 to consider the case of the appellant without being guided by the consideration that rule 23 in any way bars G his appointment. In case, the appellant is appointed respondent No. 4 will have to be reverted. In the peculiar circumstances of this case we make no order as to costs.

S.R. *Appeal allowed.*

951 SCI/77—2,500—6-4-78 GIPF.