

(1976) 07 GUJ CK 0002
In the Gujarat High Court

Case No : Spl. Civil Application No. 1025 of 1974

Bhagawati Prasad G. Bhatt

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 17, 74
Bombay Police Act, 1951 — Section 5
Civil Defence Act, 1968 — Section 5
Civil Defence Regulations, 1968 — Regulation 5(2)
Constitution of India, 1950 — Article 16, 309, 310, 311

Citation : (1977) 1 GLR 562 : (1978) 1 LLJ 215

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Judgement

D.A. Desai, J.—Petitioner Bhagwati Prasad Gordhandas Bhatt, has questioned the correctness of the order Annexure "C" dated 9th January, 1973 so far as has posting in Civil Defence Organisation and his continuity on department as per Annexure "D" dated 24th May, 1974 to Civil Defence Organisation; and in the alternative he has prayed for a direction directing the respondents to grant all allowances admissible to him as Police Inspector in the Police Force of the State of Gujarat.

2. Facts leading to this petition lie within a narrow compass. Petitioner was selected as sub-inspector of Police in July, 1962 and was sent to Police Training School at Junagadh for pre-service training and he passed the training examination in November, 1963. By an order dated 20th December, 1969 Annexure "A". Petitioner with several others were allotted to Rajkot Range by the second respondent and the petitioner was actually posted in Kutch District. He was appointed as temporary probationary sub-inspector of Police with effect from 1st January, 1954. On his satisfactorily completing the period of probation by an order dated 17th August, 1965, petitioner was absorbed as temporary Sub-Inspector of Police with effect from 1st July, 1965 and was continued in Kutch

District. Petitioner served in that capacity at various place in Gujarat State upto January, 1973 when he was posted in Baroda city. By the first impugned order dated 9th January, 1973, petitioner was temporarily promoted to officiate as Police Inspector and was posted in Civil Defence Organisation as Instructor. Petitioner took over as Instructor in Civil Defence Organisation. In February, 1973, the petitioner made a representation to the second respondent requesting him to repatriate him in the Police Department but this representation was rejected on 31st March, 1973. He made a second representation on 2nd July, 1973 and it was submitted through proper channel meaning thereby Director of Civil Defence Organisation who declined to forward it as per his endorsement dated 30th July, 1973. On 16th April, 1974 the petitioner made a direct representation to the State Government questioning even the legality and validity of his deputation-cum-transfer to Civil Defence Organisation and requesting the Government repatriate him to the Police Department, but this remained unattended. In the meantime on 21st January, 1975 the second respondent requested the petitioner to fill in two forms marked A and B. In column 8 of form A petitioner was called upon to state whether he was willing to continue as Instructor in Civil Defence Organisation and he in terms stated that he did not wish to continue. In form B he in terms stated that he is unwilling to work in Civil Defence Organisation and he must be repatriated to his parent department Ultimately the petitioner filed this petition.

3. Mrs. K. A. Mehta who appeared for the petitioner raised the following contentions at the hearing of this petition.

(1) Appointment/deputation/transfer of the petitioner by the impugned orders as Inspector in Civil Defence Organisation is illegal and ultra vires inasmuch as a Sub-Inspector of Police recruited and appointed in accordance with the provisions of the Bombay Policy Act and Bombay Police Manual cannot either be transferred or sent on deputation to any post or cadre outside the police force.

(2) If at all such a transfer or deputation of a member belonging to the Police Force of the State of Gujarat can be made under Rule 74, it cannot be done without the consent of the concerned officer.

(3) Even if the deputation to Civil Defence Organisation is treated as appointment by transfer, a person who is not willing to serve in the Civil Defence Organisation cannot be appointed in C.D.O. in view of the provisions contained in S. 5 of the Civil Defence Act, 1968.

(4) Government resolution dated 21st December, 1962 Annexure "D" is ultra vires the provisions of the Bombay Policy Manual as the resolution provides for transfer and/or deputation of the members of the Police Force to Civil Defence Organisation without their consent.

(5) Government Resolution dated 9th September, 1971 Annexure "G" is ultra vires as it provides for not paying special pay or deputation allowance to be given to those who are sent on deputation to Civil Defence Organisation : (a) it is

contrary to the provisions of the earlier resolution dated 7th April, 1969 which provides for allowances; (b) it is violative of Art. 16 because it denies equality of opportunity in public service in that the allowance is admissible to higher officers and denying simultaneously to the lower ranks.

4. Bombay Police Act was enacted to consolidate and amend the law for the regulation of the Police Force in the State of Bombay. Section 3 provides for setting up of Police Force for the whole State of Gujarat. Section 4 confers powers of superintendence on the State Government over the Police Force throughout the State of Gujarat. Section 5 provides for constitution of the Police Force. The Police Force for shall consist of such number in the several ranks and have such organisation and such powers, functions and duties as the State Government may by general or special order determine. Clause (b) of S. 5 provides that recruitment, pay, allowances and all other conditions of service of the Police Force shall be such as may from time to time be determined by the State Government by general or special order. Section 14 provides that every Police Officer of the grade of Inspector or below shall on appointment receive a certificate in form provided in Schedule II. The certificate shall be issued under the seal of such officer as the State Government may be general or special order direct. Section 23 confers power upon the State Government, Commissioner and Inspector General of Police Force allocated to their respective areas to frame rules for administration of the Police; and the power includes the power to assign duties to Police Officers of all ranks and grades and prescribing the manner in which and the conditions subject to which, they shall exercise and perform their respective powers and duties in the State. Section 28 provides as under :

"28. (1) Every Police Officer not on leave or under suspension shall for all purpose of this Act be deemed to be always on duty, and Police Officer or any number or body of Police Officers allocated for duty in one part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the state for so long as the services of the same may be there required.

(2) Timely intimation shall, except in cases of extreme urgency, be given to the Revenue Commissioner and the District Magistrate by the Inspector-General of any proposed transfer under this section, and, except, where secrecy is necessary the reasons for the transfer shall be explained; whereupon the officers aforesaid and their subordinates shall give all reasonable furtherance to such transfer".

It would thus appear from these provisions that the State Government has to constitute Police Force and prescribe number of persons to be appointed in the several ranks and it has also to prescribe conditions of service of the members of the Force. A member of the force is always on duty and he can be posted in any part of the State and he can be posted outside his division, with this limited fetter that he shall be employed on police duty in the part of the State. Thus a member of the Police Force can be assigned Police duty in any part of the State.

5. Parliament enacted Civil Defence Act, 1968. It was an Act enacted to make provision for civil defence and for matters connected therewith. Section 3 confers power on the Central Government to make rules in respect of the various items provided in different clauses of sub-s. (1) for securing civil defence. Section 4 confers power on the State Government to constitute, for any area within the State, a body of persons to be called Civil Defence Corps and may appoint a person, not being, in its opinion, below the rank of a District Magistrate to command such Corps, to be known as Controller of Corps. Sub-section (2) provides for appointment of Director of Civil Defence for coordinating the activities of the Controller within the State. Then comes S. 5 which is material. It reads as under :

"5. (1) The State Government may appoint as members of the Corps persons who are fit and willing to serve as such and the Controller may appoint any member so appointed to such office or command in the Corps, as such member is, in the opinion of the Controller, fit to hold.

(2) Every person appointed to be a member of the Corps shall be given a certificate of membership in such forms as may be prescribed"

Section 9 confers power on the Central Government to make regulations for carrying out the purpose of Chapter III of the Act and without prejudice to the generality of the foregoing power so conferred the Central Government may make regulations amongst others for regulating the organisation, appointment, conditions of service, discipline, accoutrement and clothing of members of any or all of the Corps.

6. It is not in dispute that the petitioner was selected for the appointment as Sub-Inspector of Police and was sent to Police Training School for pre-service training and on his successfully completing the training he was appointed as temporary probationary. Sub-Inspector of Police and on satisfactorily completing the period of probation he was absorbed as temporary Sub-Inspector of Police On January 9, 1973, he was temporarily promoted to officiate as Police Inspector and was posted in Civil Defence Organisation as Inspector. The petitioner question his posting in the Civil Defence Organisation.

7. Petitioner belongs to the Police Force of the state of Gujarat. He was in the cadre of Sub-Inspector of Police being one of the ranks of the Police Force. He was temporarily promoted to officiate as Police Inspector. Police Inspector is one of the ranks in the Police Force of the State of Gujarat. After promoting the petitioner as Police Inspector he was sent to Civil Defence Organisation. Order of posting in the Civil Defence Organisation does not make it clear whether it was transfer or on deputation, or his services were permanently allocated to the Civil Defence Organisation. Mr. C. K. Takwani, learned Assistant Government Pleader who appeared at the hearing of the petition made it abundantly clear that it is the case of the State Government that is the case of the State Government that the petitioner has been sent to Civil Defence Organisation on deputation. Mr.

Takwani in this connection also drew my attention to the Home Department (Special) Resolution of the Government of Gujarat dated 24th May, 1974 which provides for continuance of deputation of the Police Inspectors whose names have been set out in the Annexure to the resolution to the Civil Defence Organisation. Petitioner is shown at Sr. No. 18. Period of deputation is shown as "till expiration of 22nd January, 1974." In fact the petition has been filed in July, 1974 and Mrs. Mehta informed me that not only till then the petitioner continued to be on deputation to the Civil Defence Organisation but he in fact still continues to be on deputation till today. In fact Mrs. Mehta made it very clear to me that if the petitioner was to be repatriated even now she was not very keen on taking judgment. In order to ascertain from the Government whether now that the petitioner is on deputation for more than three years he can be repatriated, this matter was adjourned for long time. But ultimately learned Assistant Government Pleader told me that it is not possible for the Government to repatriate the petitioner and, therefore, petition was, again set down for hearing. The fact remains that the petitioner is on deputation, period of deputation now not being fixed, to the Civil Defence Organisation.

8. Members of the Police Force of the State of Gujarat are primarily governed by the Bombay Police Act and by special and general orders issued by the Government in exercise of the various powers conferred on the State Government and other higher Officers of the Police Force, viz., Commissioner of Police and Inspector-General under various provisions of the Bombay Police Act. The orders made in exercise of these powers have been printed in the form of Bombay Police Manual and all the relevant orders are collected therein. In other words, Bombay Police Manual is a compilation of various orders made by the State Government, Inspector-General or Commissioner of Police in exercise of powers conferred upon them under different provisions of the Bombay Police Act. This manual is not available in the market and it is treated as a close preserve of the Police Department. Whatever that may be, whenever a question arises before the Court, about the validity of certain action taken either by the State Government or superior officers of the Police Department and action is sought to be justified as being in exercise of powers conferred upon such officers, they take refuge in the Police manual and Court is invited to look into and it is only in that context that Bombay Police manual is made available. Whatever that may be the question is whether deputation for unlimited period of a member of the Police Force to an organisation which does not form part of the police force of the State of Gujarat is valid and legal ? And incidentally the question is whether deputation outside the cadre or outside the parent department can be ordered without the consent of the person concerned. The matter may first be examined on this point.

9. Article 309 of the Constitution provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union, or of any State. There is a proviso to the article, which confers power on the President and the Governor to make rules

relating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under Art. 309, and any rules so made shall have effect subject to the provisions of any such Act. Article 310 provides for tenure of office of persons serving the Union or a State. It provides that except as expressly provided by the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All-India service or holds any post concerned with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State. By a catena of decisions it is now well-settled that pleasure doctrine enunciated in Art. 310 is subject to the provisions of the Act that may be enacted under Art. 309, or the rules enacted under the proviso to Art 309 as well as Art. 311. It, therefore, cannot be said that because every one who holds a civil post under the State or member of the civil service of the State holds office during the pleasure of the Governor of the State, it would enable the Governor or officers exercising the powers conferred on the Governor to deal with the holder of the office or member of the State civil service in any manner as he or they like. Since the introduction of Art. 16 as well as part XIV of the Constitution, it is quite well-settled that the State can deal with the employees subject to relevant Act made in that behalf on the rules and regulations and such Act and rules and regulations would be such as not to be violative of Art 16. Article 16 has been interpreted to cover not only the initial entry into service, but also the guarantee of equality of opportunity enshrined therein covers the stage of promotion also. Now, where such is the guarantee the person joining service in a department looks forward to move vertically upward and would be entitled to be considered for the post filled in by promotion. This led to categorisation of posts. To allay apprehension of nepotism or arbitrariness in the matter of appointment to public service, ordinarily recruitment rules either statutory or be executive instructions are enacted and such rules may as well provide for direct recruitment or promotion and when in a particular service or cadre recruitment is required to be made from two sources, namely, nomination of promotion, ordinarily the Rules to be fair prescribe a quota. Once quota is prescribed, it has to be adhered to and any recruitment either by nomination or promotion in excess or violation of the quota would be violative of Art. 16 vide S.G. Jaisinghani Vs. Union of India (UOI) and Others, . The person holding a civil post or being in civil service of the State is entitled to certain conditions of service prescribed for that post. If he is in a cadre or post he continues to be in cadre or in post unless promoted or any penalty of dismissal or removal from service is imposed upon him. In the absence of imposition of such a penalty, such holder of a civil post is entitled to serve the Government till the date of superannuation, or till the date when he can be compulsorily retired under the relevant rules. That is too obvious to be mentioned and it is a guarantee which flows from Art. 16 and Part XIV of the Constitution. But as the argument on behalf of the State in this case is that the State can deal with its employees in

any manner it likes, in exercise of the power conferred on the State under Rule 17 of the Bombay Civil Services Rules, 1959, all those obvious things were required to be mentioned.

10. It may also be noticed that Police Force of the Gujarat State has been set up under the Bombay Police Act, 1951. There are various ranks in the Police Force having vertical hierarchy starting with or commencing from a constable and ending with Inspector-General of Police. All these ranks constitute Police Force of the State of Gujarat. Every rank is prescribed by the rules. Strength of every rank is prescribed or requires to be prescribed. It is incumbent upon the State to provide for recruitment, pay, allowances and other conditions of service of the police force as enjoined by S. 5 of the Bombay Police Act. Organisational set up of the district police force is prescribed in Rule 4 of the Bombay Police manual Part I. District is required to be divided into sub-divisions. It can be in charge of a Superintendent or of a Sub-Divisional Police Officer of the rank of Assistant or Deputy Superintendent of Police. Every important sub-division would have in addition, one or more Circle Police Inspectors attached to it. Police Inspector when he is in charge of a circle is called a Circle Police Inspector. Under him there are Sub-Inspectors of Police attached to various police stations. Under various police stations there can be out-posts in charge of Police head Constable. This is the organisational setup of district Police Force. Police Inspector is a member of the police force. He belongs to the police force and when he is Police Inspector he belongs to the cadre Police Inspectors strength of which is required to be prescribed.

11. Petitioner as Police Inspector was serving and was bound to serve in the police force of the State of Gujarat. It may be that he may be assigned to a district. It is open to the State Government to direct him to render service in any part of the State and he cannot complain that he is being sent outside his district, but that duty must be limited to police duty. Unfortunately, no one made clear to me what constitutes police duty and hence a broad meaning will have to be attached to it; but even if we give broad interpretation to the expression "police duty" could it involve a duty as Instructor in Civil Defence Organisation ?

12. Civil Defence Organisation is set up for civil defence and matter connected therewith. Even in that organisation the petitioner is not required to perform any work or render duty connected with civil defence. He is directed to do work of teaching. Connotation of the word "Instructor" clearly indicates imparting of instructions which in common parlance could be said to be teaching. Now, here the Police Inspector belongs to the police force of the Gujarat State and is directed to do work of teaching in an independent organisation not forming part of Police Department. Mr. Takwani never attempted to urge that Civil Defence Organisation is a part of the police force of the Gujarat State or is part of the police department. At some point of time in the past Inspector-General who is head of the police department was also the head of the Civil Defence organisation. Probably that was a temporary arrangement. Today a citizen of this

State one Mr. Udayan Chinubhai is Director of the Civil Defence Organisation. He has under him controllers in various districts. Civil Defence Organisation has its own set up. It has its own Officers. Its duties are entirely different from what can be said to be police duties. It may be that for the members of the Civil Defence Organisation, drill march or such other activities which the police force has to undertake may have been prescribed and that the petitioner might have been sent to impart instructions in respect of such duties. But the police force and for that matter police department of the Gujarat State is entirely independent and separate from Civil Defence Organisation.

13. Question is whether the petitioner, a Police Inspector, could be, without his consent, deputed to the Civil Defence Organisation ? Therefore, the question is can a person holding civil post be sent on deputation outside the cadre or parent department to which he belongs without his consent ? Ordinarily, a person belongs to a cadre serves in the cadre and discharges duties assigned to the officers of that cadre; a Mamlatdar is a Mamlatdar, and a teacher is a teacher - one belongs to Revenue Department and another belongs to Education Department. Both undoubtedly may be holding civil posts under the State. Both are civil servants of the State. Should it be said that they are interchangeable ? Even if their pay is protected could they be interchanged. Is pay protection the only necessary indicia for sending any civil servant holding one post to any other post for which not only he is not qualified, but he is least competent to discharge duties of that post. It is just not conceivable. We heard in the old princely States that a police officer could be Judge or a guard could be an Education Officer. In the present day this is just not thinkable.

14. What are the obligations of the holder of the civil post ? He is bound to discharge the duties assigned to that post. He can be promoted, if he is qualified. He can be reverted either by way of punishment or on account of exigencies of service. He can be transferred in the same cadre to an equivalent post. He can be asked to discharge all the duties assigned to all such other members of the cadre performing their normal duties of that post. But is it possible even to envisage that any member of the civil service of the State can be sent to any other post outside his parent department or outside his cadre ? Even on first principle, the answer must be in the negative and it must be for obvious reasons.

15. Today when specialisation is the order of the day, when specific educational academic and experience qualifications are prescribed for various posts and aptitude for certain type of work is taken into consideration a man may apply for a post looking forward, if he is appointed, to efficiently discharge the duties assigned to that post. A practising lawyer may be willing to be appointed as a Judge. Now, once he becomes a Judge upto the level of District Judge he is a State servant. Can the State say that he should be asked to work as Police Prosecutor without his consent on the only assurance that his lien is retained and his pay is protected ? Man applied for the post of a Judge because he had the aptitude for discharging the duties of a Judge. He may turn out to be a good

Judge but not be a good lawyer. Could he be asked against his wish to do something for which he never applied. He looked forward to be in the cadre and move up vertically. He took into consideration the duties assigned to the post for which he opted and accepted the employment. Could he be subsequently said no, because you are a Government employee Rule 17 of the Bombay Civil Service Rules permits State Government to employ you in any manner as Government thinks proper ?

16. Mr. Takwani contended that Rule 17 is a complete answer to the contention raised on behalf of the petitioner. Rule 17 of the Bombay Civil Services Rules, 1959 reads as under :

"17. Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of Government and he may be employed in any manner required by the proper authority, whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund of India or of a State, or from the revenues of a local fund, or from the funds of a body incorporated or not which is wholly or substantially owned or controlled by the Government".

With minor variation this Rule has been in the Civil Services. Rules since much prior even to the introduction of the Constitution. In fact in the Bombay Civil Services Rules, 1938 Rule 17 was in identical language except last one line which is only a consequential amendment. Mr. Takwani urged that Rule 17 permits the Government to direct any Government servant to work in any manner required by the proper authority and the expression "to work in any manner" permits the Government to employ him anywhere as Government think proper notwithstanding that he belongs to one cadre or is qualified for certain type of work only. Expression "in any manner" cannot be interpreted in such a broad manner as to nullify the guarantee of Art. 16 as well as the provisions of Arts. 309, 310 and 311. Rule 17 appears to be a relic of the past. It was a pre-Constitution provision. It must be understood within the light of the provisions of the Constitution. Expression "in any manner" would only mean anything permissible by relevant rules or by relevant conditions of service. That is all the meaning that can be assigned to the expression "in any manner" in Rule 17. If the meaning which Mr. Takwani wanted to give to the expression "in any manner" were to be accepted, it would mean that any employee can be taken outside the cadre, outside the parent department even on a post lower than the post he was holding and when he is asked to do any work for which he may not be competent which would not be befitting the dignity of the last office that he held. In this connection, it would be advantageous to refer to E.P. Royappa Vs. State of Tamil Nadu and Another, ; E.P. Royappa Vs. State of Tamil Nadu and Another, . Observations made therein are in the context of a member of the Indian Administrative Service, yet they hold good even in respect of a holder of any other civil post under the State. A member of Indian Administrative Service could not be appointed to non-cadre post unless the Government makes a declaration

about the equivalence of the post. Making such a declaration is a sine qua non of the exercise of power under the relevant rules. It was not considered an idle formality which can be dispensed with at the sweet will of the Government. Then comes the pertinent observation which reads as under :

"It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-cadre post which is inferior in status and responsibility to that occupied by him. So far as cadre posts are concerned, their hierarchy would be known, but a non-cadre post created by the Government would be stranger in the hierarchy, and that is why sub-rule (1) requires that before appointing a member of the Indian Administrative Service to such non-cadre post, the Government must declare which is the cadre to which such non-cadre post is equivalent in status and responsibility so that the member of the Indian Administrative Service who is appointed to such non-cadre post, would know what is the status and responsibility of his post in terms of cadre posts and whether he is placed in a superior or equal post or he is brought down to an inferior post. If it is the latter, he would be entitled to protect his rights by pleading violation of Art. 311 or Arts. 14 and 16 of the Constitution, whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Government. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depriving effects of personal and political nepotism or victimisation or the vagaries of the political machine".

Examining the content of the guarantee enshrined in Art. 16 it was said that the basic principle which informs both Arts. 14 and 16 is equality and inhibition against discrimination. Court examined the content and reach of this great equalising principle and said that Arts. 14 and 16 strike at arbitrariness and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. If such is the fetter on State actions, can it ever be said that Rule 17 of the Bombay Civil Services Rules would permit Government to employ a Government employee in any manner meaning thereby wherever and in whatever post for whatever duty the proper authority considers him fit to employ ? Such an approach would strike at the root of Art. 16 and must be negated.

17. Mr. Takwani said that the petitioner's lien is retained in the parent department and he is merely deputed to Civil Defence Organisation. Word "deputation" itself connotes service outside the cadre or outside the parent department in which he is serving. One is never deputed in his own department. He can be deputed to other department. If a person is holding an office and is bound to render duty it must be in the cadre and the post to which he is appointed. If he is to be taken away from that post and sent to another department it is said that he is being deputed to that department. Now, when

one is in the department or is in the cadre, the proper authority can post him wherever it is open to the authority to post a person belonging to that cadre and take the very duty which is the duty assigned to them. But if an employee is to be taken out of cadre and sent to altogether another field of service, it can never be done without his consent. With the consent the employee can be deputed to any department or any cadre or at other place of service. Transfer is always limited to equivalent post in the same cadre and in the same department. Deputation and transfer basically differ from each other in that transfer can be only to an equivalent post in the same cadre; deputation must be in department other than the parent department where even equivalence may not have been determined. Transfer is right of the master and it is an incident of service and can only be challenged on the grounds of mala fide or violation of statutory rule relating to transfer. Deputation can only be with the consent because the employee joined department to render service in that department and he cannot be made to serve somewhere else may be in a post much lower to his post. In that event, he may have never joined service. If such power is to be conceded contract of service may degenerate into a contract of slavery because the slaves can be employed in any manner and for any work human or inhuman as the master or owner of the slave desires. Such is not the position of the employees of the State Government. Concept of deputation takes within its sweep rendering service outside the parent department or outside the cadre and, therefore, with it carries concept of allowance which has been styled as deputation allowance. While appointing the Second Pay Commission, the State Government also directed the Commission to inquire and make recommendations about the deputation allowance. Probably deputation allowance has its origin in an inducement that may be offered to the employee to give his consent so as to serve outside the parent department or outside the cadre. Therefore, it is inconceivable that deputation can be ordered without the consent of the concerned employee.

18. Both Mrs. Mehta and Mr. Takwani in this connection drew support for their rival contentions from Rule 74 of the Bombay Police manual Volume 1, P. 59. In fact Rule 74 is quite limited in its application. As S. 5 of the Bombay Police Act provides for prescribing the strength of each rank. Rule 74 prescribed the concept of strength of rank including therein a training or deputation reserve required for training all officers necessary for its normal work and accordingly the occasion for recruitment by transfer from another department or service should be rare. The expression of which the Court should take notice is "the occasion for recruitment by transfer from another department or service should be rare". Bombay Police manual deals with various aspects governing conditions of service, duties, recruitment, pay, allowances of the members of the police force. Now, recruitment here referred to must be recruitment to various ranks of the police force. "Recruitment by transfer" would mean transfer from another department to police department and occasion for such recruitment by transfer into police department should be considered rare. It provides that when,

however, such an occasion actually arises the principles laid down in Rule 74 may as far as possible be adhered to. Now we are here not concerned with the recruitment of a person from another department to police department nor is deputation of the petitioner styled as transfer. Therefore, Rule 74 will not be attracted and neither side can draw support from Rule 74.

19. It thus appears well-established on principle that the petitioner who is a Police Inspector could not be transferred to Civil Defence Organisation nor can he be sent on deputation without his consent. Consent of the petitioner being necessary is now impliedly even admitted. Probably after this petition was filed the appropriate authority became wise to the points herein raised and it appears that in January, 1975, the Director of Civil Defence Organisation addressed a letter to petitioner asking him to fill in forms A and B. Column 8 in form A reads thus :

"Whether willing to continue as C.D. Inspector in Civil Defence Organisation."

The answer of the petitioner is in the negative. In form B petitioner in terms stated that he does not want to work in Civil Defence Organisation. If Rule 17 were to be relied upon, it passes comprehension why the petitioner was asked to fill in form "A". Thus it is impliedly conceded that deputation and that too for an indefinite period of a person outside the cadre or parent department cannot be ordered without his consent.

20. This very point may also be examined from a slightly different angle. Petitioner has been sent to the Civil Defence Organisation. Section 4 of the Civil Defence Act provides for setting up of Civil Defence Corps. Section 5 which has been reproduced in extenso hereinabove provides that the State Government may appoint as members of the Corps persons who are fit and willing to serve as such. If the petitioner is sent to Civil Defence Organisation the question is whether he is a member of the Corps. If he is not a member of the Corps he cannot be made a member of the Corps in view of the provisions contained in S. 5 which provides that one can be a member of the Corps if he is willing to be a member of the Corps. And in the case of the members of the police force there is a bar to their being admitted as member of the Corps. Central Government has enacted what are known as Civil Defence Regulations, 1968 in exercise of the powers conferred by S. 9 of the Civil Defence Act. Regulation 5(2) provides that members of the police force are not ordinarily eligible for enrollment in a Civil Defence Corps. The answer of Mr. Takwani was that petitioner is sent on deputation as Instructor and he is not a member of the Corps and, therefore, Regulation 5(2) would not be attracted. It is difficult to understand this submission because if the petitioner and several others are sent to Civil Defence Organisation as Instructors, unless they are members of the Corps. I fail to see how they would belong to the organisation and they are under a disability from becoming a member of the Corps. It is thus crystal clear that the petitioner could not have been sent to the Civil Defence Organisation.

21. Having examined the matter on principle, it is now necessary to look at some of the decided cases to which my attention was invited at the hearing of this petition. In *State of Mysore v. Papanna*, 1971(2) Service Law Reporter p. 48, a question arose whether the services of a person belonging to Mysore Civil Service would stand transferred to the University set up under the University of Agricultural Sciences Act, 1963. The answer was in the negative. Mr. Takwani, however, urged that in that case on the transfer of services, the petitioners ceased to be in civil service of the State and that weighed with the Supreme Court. In the Present case, the petitioner has not ceased to be servant of the Gujarat State and that he holds lien on the post of Police Inspector. It is true that what weighed with the Supreme Court was that on the transfer of the services of the petitioner to the University he ceased to be civil servant of the State. That aspect does not arise for consideration in the matter before me and, therefore, the decision would not be of much help. Mrs. Mehta, however, drew my attention to *Prem Parveen v. Union of India* (1973) 2 S.L.R. 659. That is a case more or less akin to the case before me. In that case the petitioner who was a confirmed upper division clerk under the Directorate of Extension, Ministry of Food and Agriculture, Community Development and Co-operation (Department of Agriculture) New Delhi was transferred to the regional station. He challenged the order of transfer. The Court posed a question thus : Has the Government right to transfer a confirmed permanent Government servant against the latter's will outside his cadre ? The answer was in the negative. On behalf of the Union of India reliance was placed on Fundamental Rule 15 which confers power on the proper authorities to transfer Government servants from any post to a post even outside the cadre. Rejecting this contention the Court held that it does not stand to reason that a person who is recruited to a particular cadre should be compelled against his wish to serve outside the cadre even when the permanent post to which he holds a lien exists within the cadre.

22. Thus on principle and authority, it appears clear that a person belonging to a cadre cannot be deputed or transferred outside the parent department and outside the cadre. He can be sent on deputation but that too with his consent. Deputation cannot be without the consent of the person to be deputed. Viewed from this angle, order Annexure "C" dated 9th January, 1973 posting the petitioner a Police Inspector in the Civil Defence Organisation is illegal and invalid. Similarly the resolution Annexure "D" dated 24th May, 1974 so far as it affects the petitioner deputing and continuing his deputation to the Civil Defence Organisation is illegal and invalid and they both must be quashed and struck down. In this view of the matter, it is not necessary to decide other points raised by Mrs. Mehta.

23. Accordingly this petition is allowed by issuing a writ of mandamus quashing and setting aside order Annexure "C" dated 9th January, 1973 so far as it relates to the posting of the petitioner in the Civil Defence Organisation and Resolution Annexure "D" dated 24th May, 1974 so far as it relates to the petitioner continuing his deputation in Civil Defence Organisation and respondents are

directed to repatriate the petitioner to the parent department. Rule made absolute to that extent with no order as to costs.