

(2016) 01 AHC CK 0235

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (S/S) No. 560 of 2016

Bhupendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Citation : (2016) 2 ADJ 160 : (2016) 3 AllWC 2716

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Surya Prakash Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Rajan Roy, J.—1. Heard learned counsel for the parties. The petitioner herein has challenged an order dated 5.7.2015 by which the opposite party No. 3 has directed the opposite party No. 5 to relieve the petitioner consequent to the transfer order passed on 7.10.2012 transferring him from Civil Police to Government Railway Police as the litigation in this regard has come to an end and the legal position has been settled by a Full Bench decision of the Supreme Court in Om Prakash Singh's case.

2. The petitioner herein had earlier filed a writ petition bearing No. 5484(SS) of 2012 challenging the aforesaid transfer order dated 7.10.2012. Initially stay order was passed on 9.10.2012. Subsequently, in view of the Full Bench decision in the case of Om Prakash Singh and others v. State of U.P. and others, , 2014(7) ADJ 628 (LB)(FB) : , 2014(3) ESC 1711 (A11)(LB)(FB), the writ petition was dismissed and the interim order was vacated. The judgment dated 30.7.2015 passed in the Writ Petition No. 5484(SS) of 2012 filed by the petitioner is quoted herein below:

"Heard Sri Yashovardhan Swarup, Sri Desh Deepak Singh, Sri Rajesh Kumar Pandey, Sri Yogesh Kumar Awasthi and other counsel appearing on behalf of learned counsel for the petitioner in other connected writ petitions, Sri

Gyanandra Kumar Srivastava, learned Additional Chief Standing Counsel for opposite parties and perused the record.

Since the common question is involved in the writ petitions, so the same are being decided by a common judgment.

Facts, in brief, of the present matters are that petitioners, who are working as Constable in Civil Police have been transferred to Government Railway Police by means of impugned transfer orders under challenged in the instant matters by the petitioners on the ground that as they are working as Constable in Civil Police for a period of more than ten years, so they cannot be transferred from Civil Police to Government Railway Police in view of the provisions as provided under Regulation 525 of Uttar Pradesh Police Regulations.

Controversy involved in the present matters has been referred to Full Bench on the following points:

(1) Whether a police constable working in the civil police who has rendered service for more than ten years cannot be transferred to another branch in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations in view of the decision of the Supreme Court in *Jasveer Singh v. State of U.P. and others*, 2008(2) ADJ 484 (SC).

(2) Whether the Government railway police and civil police constitute one cadre or different service cadres.

Thereafter Full Bench of this Court in the case of *Om Prakash Singh and others v. State of U.P. and others*, v2014(7) ADJ 628 (LB)(FB) : , 2014(3) ESC 1711 (A11) (LB)(FB) answered to the above said questions after taking into consideration the Regulation 525 of Uttar Pradesh Police Regulations in following terms:

(i) A police constable working in the civil police who has rendered service for more than ten years can be transferred to another branch, as explained above, in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations;

(ii) The Government railway police is a branch of the police force and hence the transfer of a civil police constable who has put in more than ten years" service to the Government railway police would not be prohibited, subject to compliance with the norms stipulated in Regulation 525 of the U.P. Police Regulations.

In view of the above said fact, I do not find any illegality or infirmity in the impugned orders rather the same are as per Regulation 525 of the Uttar Pradesh Police Regulations under challenged in the writ petitions by which petitioners have been transferred from the post of Constable in Civil Police to Government Railway Police.

Accordingly, the writ petitions lack merit and are dismissed.

Interim order, if any, stands discharged."

3. The action impugned in the present case is merely consequential to the

issuance of the transfer order dated 7.10.2012 which was challenged in the earlier writ petition, therefore, now for the petitioner to file a second writ petition saying that he has attained the age of 47 years in July, 2014, therefore, irrespective of the Full Bench decision and in view of the circular dated 3.3.2012 he is not liable to be compelled to join in the Government Railway Police does not appear to be sustainable in the eyes of law as the petitioner had attained the age of 47 years when the earlier writ petition filed by him was still pending, therefore, he ought to have raised this issue before this Court in the said writ petition but not having done so, this writ petition is barred by the principle of constructive res judicata and res judicata, therefore, no writ of mandamus as prayed for can be issued. If at all permissible, the petitioner may seek appropriate remedy by way of review of the judgment dated 30.7.2015 passed in his earlier writ petition but no such relief can be granted in this second writ petition. Subject to the above, the writ petition is dismissed.