
(2012) 12 AHC CK 0233

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 57117, 57418, 57726, 61617 and 62469 of 2012

Chandra Shekhar Rawat and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Police Act, 1981 — Section 2

Uttar Pradesh Police Regulations, 1948 — Regulation 525

Citation : (2013) 2 ADJ 459 : (2013) 4 AWC 4344

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant;

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner has challenged the transfer Order dated 17.8.2012 passed by the D.I.G./ Deputy Superintendent of Police Establishment, U.P., Police Head Quarters, Allahabad and the consequential order dated 25.10.2012 passed by the Senior Superintendent of Police, Jhansi, whereby the petitioner has been transferred from Civil Police, Jhansi to Government Railway Police, Lucknow (G.R.P.). The petitioner is a constable in the police force having been appointed in 1987 and has completed more than 10 years of service. The grounds of challenge is, that the transfer order is in violation of the first part of Regulation 525 of the U.P. Police Regulations, namely, that the petitioner has worked for more than ten years in the police force and therefore cannot be transferred any longer. The second ground urged is, that the second part of Regulation 525 is not applicable inasmuch as it is only applicable to a police officer and is not applicable to a Constable, as has been held by the Supreme Court in the case of Jasveer Singh v. State of U.P. and titters, 2008 (2) ADJ 484. The third, ground of attack is, that the transfer order was passed by the Deputy Superintendent of Police /Additional Superintendent of Police, who is neither the competent authority nor the appointing authority of the petitioner and therefore,

the transfer is perse illegal and was liable to be quashed.

2. Counter-affidavit and the rejoinder-affidavit have been exchanged and consequently, the writ petition is being disposed of at the admission stage itself.

3. The controversy relating to the transfer of a police constable is going on for several years and from time to time a large number of writ; petitions are being filed, which have been decided inspite of which new grounds of attack is coming before the Court. It has, therefore, become necessary to decide the writ petition so that the controversy is resolved and the transfer, if valid, are effected. It has come to the notice of the Court that on account of the interim orders being passed, constables who were posted in G.R.P. are not being transferred back to the Civil Police inspite of a condition attached to their transfer orders that they would be sent back to the Civil Police upon completion of three years of service in G.R.P.

4. In the present case, the controversy is with regard to a Constable being transferred from Civil Police to G.R.P. The entire attack is on the interpretation of Regulation 525 of the Regulations. For facility, the said provision is extracted hereunder:

525. Constable of less than two years" service may be transferred by the Superintendent of Police from the armed to the civil police or vice versa. Foot police constables may be transferred to the mounted police at their own request. Any civil police constable of more than two and less than ten years" service may be transferred to the armed police and vice versa by the Superintendent for a period not exceeding six months in any one year. All armed police constables of over two years" service and civil police constables of over two and under ten years" service; may be transferred to the other branch of the force for any period with the permission of the Deputy Inspector-General.

In all other cases the transfer of Police Officers from one branch of the force to another or from the police service of other Provinces to the Uttar Pradesh Police requires the sanction of the Inspector General.

5. At the outset the Court finds that Regulation 525 is not confined to a transfer of a Constable alone. Chapter XXXIV of the Police Regulations includes Regulations 520 to 526 which all relates to the transfer of police officers, the power to be exercised by various authorities, namely, by the Superintendent of Police within his own range. If a constable is transferred outside the range, then the transfer order is required to be passed by another authority. In the event a constable is transferred from Armed Police to Civil Police within two years of service, the same can be passed by the Superintendent of Police. But, beyond two years and less than 10 years permission of the D.I.G. is required. Consequently, the Court finds that the Regulation 525 is not confined to a Constable. A Constable can also be transferred under Regulation 520, which states that the Inspector General of Police may transfer a "police officer" not above the rank of Inspector throughout the Province.

6. This leads to a question as to who is a police officer. A police officer is a member of the police force as contemplated u/s 2 of the Police Act, 1981. The Police Force has been defined under Regulation 396, which consist of the following bodies, namely-

- (1) Provincial Police, Civil, Armed and Mounted.
- (2) Government Railway Police
- (3) Village Chaukidars.

Regulations 397 and 398 are also relevant, which are extracted hereunder:

397. The gazetted officers of the Force are--

- (1) Inspector-General.
- (2) Deputy Inspector- General
- (3) Superintendents.
- (4) Assistant Superintendents.
- (5) Deputy Superintendent.

398. The non-gazetted officers of the Force are-

- (1) Inspectors.
- (2) Sub-Inspectors.
- (3) Head Constables
- (4) Constables.

7. Under Regulation 397, the gazetted officers are specified and, under Regulation 398, non-gazetted officers are specified, which includes Constables. From a reading of the Police Act and the Regulations it is apparently clear that the police force consists of officers and men and that a Constable is also an officer.

8. The question as to whether a Constable is a police officer or not has been dealt at length in the matter of Jai Narain Prasad v. State of U.P. and others, 2008 (9) ADJ 267, in which the entire Act and the Regulations was analyzed and, the learned: Judge came to the conclusion that the term "police officer" includes all the members of the police force and that a Constable is also a police officer. This Court, is in entire agreement with the said decision and therefore, does not wish to elaborate any further on this controversy. The Court is of the opinion, that a Constable is also a police officer.

9. The controversy raised by the learned counsel, namely, that the second part of Regulation 525 is not applicable to a constable is erroneous. The second part of Regulation 525 is also applicable to a Constable and other police officers. A

reading of the entire provision of Regulations 525, i.e., the first part and the second part would make it apparently clear the various contingencies have been indicated wherein a Constable could be transferred within the branch or outside the branch by various authorities. The authorities have been given various powers of transfer under certain contingencies. A Superintendent of Police can exercise the power and transfer a non-gazetted officer within its jurisdiction. A constable in the Civil Police having worked for more than 2 years but less than 10 years could be transferred from Civil Police to Armed Police and vice versa by the Superintendent of Police for a limited period not exceeding 6 months in any one year, but if a constable in Armed Police or in Civil Police, having worked for more than two years but less than 10 years is transferred to another branch of the police force, in that event, the permission of the D.I.G. is required. In all other cases, the transfer of a police officer, i.e., gazetted and non-gazetted officer, from one branch of the force to another branch of the force or from the police service of other Provinces to Uttar Pradesh requires the sanction of the Inspector General (now D.G.P.).

10. In the light of the aforesaid, the contention of the petitioner that having completed 10 years of service as a Constable, the petitioner could not be transferred any longer, is patently misconceived. It cannot be a case that the petitioner can only be transferred upto 10 years of service. The petitioner is on a transferable post and can be transferred from the date of his appointment till the date he reaches the age of superannuation. The contingency of two years and less than ten years was confined to the powers given to the D.I.G. where a Constable was to be transferred from Civil Police to Armed Police from one Branch to another Branch but, after completion of 10 years, the power is given to the Inspector General of Police, now the Director General of Police. The second part of Regulation 525 has to be read along with Regulation 520. In the light of the aforesaid, the contention of the petitioner with regard to violation of the first part and the second part of Regulation 525, is misconceived and is rejected.

11. The learned counsel for the petitioner has relied upon a decision of the Supreme Court in the matter of Jasveer Singh (supra) wherein the Supreme Court held that the second part of the Regulation 525 gives power of transfer only in respect of a police officer and not a police constable. For facility, the relevant portion of the judgment, given in paragraph 7, is extracted hereunder:

We regret to say that we do not agree with the submission of the learned Counsel for the State of U.P. Second part of Regulation 525 gives power of transfer in respect of a Police Officer and not a police constable. The police constable is covered by the first part of Regulation 525 and once there is a specific provision for transfer of constables in the first part of Regulation 525 then the second part of the said regulation cannot be said to deal with them.

12. In this regard the Court finds that the case of Jasveer Singh (supra) related to his transfer from Armed Police to Civil Police where the transfer order was passed by the Superintendent of Police. The issue in the said case was as to

whether the Superintendent of Police had the power to transfer Jasveer Singh from Armed Police to Civil Police. The Supreme Court found that Jasveer Singh had worked for more than 10 years and therefore, the Superintendent of Police could not transfer him as he had no power and that the Superintendent of Police had only a power to transfer a Constable having less than two years of service from Armed Police to Civil Police.

13. In the light of the aforesaid factual averments in the" case of Jasveer Singh (supra), the Court finds that the judgment must be read as a whole in its entirety in the light of the pleadings of the parties and the relief claimed as held by the Supreme. Court in State of Haryana and Others Vs. M.P. Mohla, .

14. A decision must be understood in the context of facts based on which the observations are made therein and, in this regard, the maxim *secundum subjectam materiam* comes into existence as has been explained by the Supreme Court in Rajendra Singh Vs. State of U.P. and Another, .

15. In Union of India (UOI) and Others Vs. S.K. Saigal and Others, , the Supreme Court went to the extent of saying that a decision which is contrary to law and rules does not form a precedent and that a decision becomes a binding precedent when it decides the law in accordance with the Act and the Rules.

16. In the opinion of the Court, every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found. What is of essence in a decision is its ratio and not every observation found therein.

17. As stated earlier, the "ratio decendi" in Jasveer Singh case (supra) is, that the Superintendent of Police had no power to transfer a police constable from Armed Police to Civil Police since he had worked in Civil Police for more than 2 years and therefore, the Superintendent of Police had no authority of law. The Supreme Court had no occasion to consider Chapter XXXIV of the Regulations, namely, Regulations 520 to 526, which relates to a transfer of a police officer. The Supreme Court also had no occasion to consider Regulations 396 and 397 read with Section 2 of the Police Act.

18. In the light of the aforesaid, the observations of the Supreme Court, that the second part of Regulation 525 only relates to a police officer and not to a police constable, is not a binding precedent and cannot be taken into consideration nor can it be read in isolation as held by the Supreme Court itself. The entire judgment must be read in its entirety in the light of the pleadings of the parties and the relief claimed.

19. A Division Bench of this Court, in the matter of Vinod Kumar Pandey Vs. State of U.P. and Others, , has distinguished the decision of the Supreme Court in Jasveer Singh (supra) as well as by the learned single Judge in the case of Jai Narain Prasad (supra).

20. On the third question, namely, as to whether the transfer order was passed

by the competent authority or not, the Court finds from a perusal of the impugned order, that the transfer order has been passed on the basis of the approval granted by the Police Establishment Board pursuant to which a consequential order of transfer has been communicated to the petitioner. The Police Establishment Board was constituted pursuant to the judgment of the Supreme Court in the matter of Prakash Singh and Others Vs. Union of India (UOI) and Ors, , wherein the Supreme Court in paragraph 31(5) directed all the State Governments to constitute a Police Establishment Board with regard to transfer, postings, promotions and other service conditions relating to matters of officers of and below the rank of the Deputy Superintendent of Police. For facility, the directions of the Supreme Court in the matter of Prakash Singh (supra) is extracted herein:

There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their: being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

21. It has come on record that the Police Establishment Board was constituted pursuant to the judgment of the Supreme Court. The impugned order of transfer indicates that the transfer has been approved by the Police Establishment Board. Consequently, the contention of the petitioner that the transfer order was passed by an authority who had no authority of law is patently erroneous.

22. In the end, the learned counsel for the petitioner submitted that a Division Bench has framed two questions and had referred them to a larger Bench and therefore, the matter should be kept in abeyance till the issue is decided by a larger Bench. The issue which has been referred to a larger bench is:-

1. Whether the police constable working in the Civil Police and rendered service for more than 10 years cannot be transferred to other branch keeping in view the provisions contained in Regulation 525 of the U.P. Police Regulations read with the judgment of Jasveer Singh's case (supra) delivered by Hon"ble Supreme Court.

2. Whether the Government Railway Police and Civil Police constitute one cadre

or both are different service cadre ? In case both constitute same service cadre, then rider made by Regulation 525 may not be applicable but in case both are different service cadre, then obviously, after 10 years of service, a police constable may not be transferred from civil police to Government Railway Police or vice versa as the case may be.

23. In my view, the mere fact that a Division Bench has referred the issues to a larger Bench does not mean that the issue cannot be decided by the Bench concerned. This Court has decided the issue, which will be considered by the larger Bench, if required. In the event, the larger Bench decides the issue which favours the petitioner, it would be open to the petitioner to move an application before the authority concerned for his transfer back to the Civil Police. But at the moment, the issue has to be decided so that the transfer orders are enforced. On account of interim orders, being passed by the Court, a police officer is not being posted in G.R.P. On the other hand, a police officer posted in G.R.P. for more than 3 years is not being relieved. This has led to a situation where the G.R.P. has become understaffed. Such anomaly should not be allowed to continue and therefore, it has become necessary for the Court to decide the question. In the light of the aforesaid, the Court does not find any error in the transfer order. The writ petition fails and is dismissed.