
(2011) 09 AHC CK 0288
In the Allahabad High Court
Case No : Special Appeal No. 616 of 2011

Constable No.892530207, Om Prakash Singh and Others	APPELLANT
Vs	
State of U.P.and Others	RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Uttar Pradesh Police Regulations, 1948 — Regulation 525

Citation : (2011) 09 AHC CK 0288

Hon'ble Judges : Devi Prasad Singh, J and Satish Chandra, J

Final Decision : Allowed

Judgement

Satish Chandra, J.—Present appeal is filed under Chapter VIII Rule 5 of the High Court Rules against the judgment and order dated 4.8.2011 passed by Hon"ble Single Judge in writ petition No. 4762 (S/S) of 2011 by which the writ petition has been dismissed, where a plea was taken that persons working in civil police for more than 10 years cannot be transferred to G.R.P.

2. Heard learned counsel for the appellant and the learned counsel for respondents.

3. It has been submitted by learned counsel for appellant that there is conflict between two judgments passed by Division Bench of this court i.e Special Appeal No. 723 of 2009 Vinod Kumar Pandey Vs. State of U.P. And others decided on 15.7.2009 and Special Appeal No. 392 of 2009 Mahboob Alam and others Vs. State of U.P. Decided on 27.7.2009. The relevant portion of the judgment in Special Appeal No. 392 of 2009 is reproduced hereunder:

"She has further submitted that in case such an interpretation is given, it would mean that the police constable who have put in more than 10 years of service in a particular branch, he or she is immune from transfer to any other branch and even the Director General of Police cannot do so. Submission is that it is in the interest of police discipline as well as for maintaining law and order as well security, such transfers are made and there cannot be a complete embargo in

exercise of such power.

Regulation 525 is reproduced below:

"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."

Learned Counsel for the appellant has placed reliance upon the case of Jasveer Singh versus State of U.P. and others i.e. Civil Appeal No.622 of 2008 dated on 23.1.2008 wherein the apex court while considering meaning and import of Regulation 525 of the U.P. Police Regulations has observed that Regulation 525 of the aforesaid Regulations is in two parts. The first part relates to the police constables and the second part relates to the police officers. The Court has further observed that second part in which power has been conferred for transferring any police officer, in all other cases, which are not covered by first part, can be exercised with the approval of the Inspector General of Police (now the Director General of Police), is not applicable in the case of police constables which are governed by separate part of the Regulations namely; first part of the Regulations.

In view of the judgment of the Apex Court, it cannot be said that the appellants who are constables, having put in more than ten years of service in Civil Police could have been transferred under second part of Regulation 525 of the aforesaid Police Regulations with the approval of the Deputy Inspector General of Police, even if it is assumed that the delegation of power made in his favour was correct.

The special appeal is allowed. The order dated 9th October, 2007 passed by the learned Single Judge as well as the order of transfer of the appellants are hereby quashed."

4. In view of judgment and order dated 27.7.2009, passed in Special Appeal No.392(S/B) of 2009, the impugned order, prima facie suffers from substantial illegality and the petitioners could not have been transferred since they have rendered more than 10 years of service in the civil police.

5. Ms Sangeeta Chandra, learned Addl. Chief Standing Counsel has invited attention to another judgment and order dated 15.7.2009, passed in Special Appeal No.723 of 2009 Vinod Kumar Pandey versus State of U.P. and others and

submitted that Regulation 525 of the Police Regulations does not create a bar for transfer and the Board is empowered to transfer a police constable from one branch to other branch. It is also stated that the period of 10 years shall not come in the way for transferring the police constable from civil police to Government Railway Police. Relevant portion from the judgment of Vinod Kumar Pandey (supra) is reproduced as under :

"We do not find any substance in the submission of the learned counsel for the appellant. True it is that the Government Railway Police is a separate branch of General Police Force but from that it cannot be inferred that it is altogether a separate Police Force for the purpose Regulation 525 of the Regulations.

We are of the opinion that the Civil Police is a branch of General Police Force and so is the Government Railway Police and in that view of the matter, there is no prohibition of transferring a Constable of the Civil Police to Government Railway Police. It is not the case of the appellant that he has been transferred from Civil Police to Armed Police.

Now referring to the decision of the Supreme Court in the case of Jasveer Singh (supra), the second case related to the transfer of a Constable from civil police to armed police. Admittedly, the appellant has not been transferred from civil police to armed police. Hence, reliance on the part of the appellant on the judgment in Jasbir Singh (supra) is absolutely misconceived.

We are of the opinion that the learned Judge did not err in dismissing the writ petition.

We do not find any merit in the appeal and it is dismissed accordingly."

6. From the judgments, rendered by two Division Benches of this Court in two separate Special Appeals at Allahabad and Lucknow, there appears to be two different view taken by their Lordships while interpreting Regulations 525 of the U.P. Police Regulations.

7. Learned counsel for the petitioners has drawn attention of this Court to the judgment of Hon"ble Supreme Court in the case of Jasveer Singh versus State of U.P. and others 2008 (2) ADJ 484(SC). In the case of Jasveer Singh(supra), while interpreting Regulation 525 of the Police Regulations, their Lordships held that the second part of Regulation 525 of the Regulations relates to police officers and not a police constable. It has been held by their Lordships of Hon"ble Supreme Court that the police constable is covered by first part of the Regulations 525 of the Regulations and once there is a specific provision for transfer of constable in the first part of the Regulation 525, then second part cannot be made applicable. Hon"ble Supreme Court further held that the transfer is bad on the ground that it was passed with regard to a constable who has rendered 10 years of service. Relevant portion from the judgment of Jasveer Singh is reproduced as under:

"6. Learned counsel for the State of U.P. pointed out that Regulation 525 in first part puts a condition of more than two years but less than ten years of service

whereas under the second part of the said Regulation a general power has been given for transfer of any police officer from one branch to another branch or from the police service of other Provinces to the Uttar Pradesh Police with the prior sanction of the Inspector General.

7. 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 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. "

8. In identical situation, while considering a petition, one of us (Hon"ble Devi Prasad Singh, J) in writ petition No. 5049 of 2009 (S/S) framed the following substantial question of law and referred the matter to larger Bench,

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 in view of the judgment of Hon"ble Supreme Court in the case of Prakash Singh (Supra), it is mandatory for the Police Establishment Board to pass an order of transfer with regard to police officer/police constable and mere approval of the Police Establishment Board shall not be sufficient."

9. It is admitted by learned counsel for the State that the respondent herein has put in more than ten years" of service and he has been transferred from civil police to G.R.P. Therefore, in view of Jasveer Singh's case (supra), the order transferring the respondent from civil police to the G.R.P. may be bad as he did not have the power in terms of Regulation 525. The said Regulations are statutory in character as they have been framed under Section 46 of the Police Act, 1861.

10. It has been submitted by Smt. Sangeeta Chandra, learned Addl. Chief Standing Counsel that so far the second question is concerned, it has been answered by Full Bench in the case of Vinod Kumar Pandey Vs. State of U.P and others, in Special Appeal No. 737 of 2009, reported in 2010 ADJ Vol7, 315 and it does not require any further adjudication. However so far the first question is concerned still no decision has been taken as admitted by parties counsel by the larger Bench. While deciding the controversy in question the Hon"ble Single Judge has not considered aforesaid aspect of the matter and being conflict between two Division Bench judgments of this court, it will be appropriate that the matter be adjudicated upon by larger Bench. During the course of argument she stated that the interim order passed by hon"ble Single Judge has been upheld by Division Bench vide order dated 17.7.2007 in Special Appeal No. 935 of 2007. Smt. Sangeeta Chandra further submits that in identical situation, one

judgment of Hon"ble Single Judge of this Court at Allahabad has been upheld by the Division Bench in Special Appeal. From the material placed by the parties" counsel and argument advanced, it does not transpire from any of the judgments referred that this Court while sitting singly or in the Division Bench had considered the relevant material with regard to constitution of Government Railway Police. Whether the Government Railway Police and regular police constitute same cadre or different one and how the Government Railway Police was created to serve in specialized field to check crime in Railways is not borne out from the judgment or material placed by the parties" counsel.

11. It is settled provision of law that U.P. Police Regulations have got statutory force and transfer from Government Railway Police to regular police or vice versa is a continuous process and has been done since long for specified period. It is stated that persons working in Government Railway Police are reverted back to civil police not as employees belonging to the same cadre or department. Question requires adjudication. Case relied upon by the learned Addl. Chief Standing Counsel also does not reveal that relevant Government Orders, circulars, rules or regulations have been considered by the Division Bench with regard to constitution, creation and establishment of the Government Railway Police which requires adjudication.

12. The judgment rendered by Hon"ble Supreme Court in the case of Jasveer Singh (supra), prima facie seems to lay down that the constables who have rendered service for more than 10 years, may not be transferred to other branch but keeping in view the conflicting judgment pronounced by two Division benches of this court, it shall be appropriate that the question cropped up may be referred to larger Bench to settle the controversy at rest for all times to come. Accordingly, we frame the following questions for adjudication by larger Bench of this Court keeping in view the arguments advanced by the learned counsel for the parties,

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.

13. Let the record be placed before Hon"ble the Chief Justice for constitution of larger Bench forthwith with regard to substantial questions of law(supra) involved in the present controversy.

14. In case the appellant has joined in G.R.P., it shall be subject to final outcome of the writ petition.