
(2013) 07 P&H CK 0884
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15457 of 2013

Ct. Yogender

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2014) 1 PLR 202

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Judgement

Rajiv Narain Raina, J.—The petitioners before this Court are 118 Constables and Head Constables serving in the office of Superintendent of Police, Yamunanagar, which is their home district. They have been transferred vide order dated 12.7.2013 (P-2) from their home districts to District Kaithal, Kurukshetra and Karnal as a result of a policy decision taken not to post Constables and Head Constables in their home districts on administrative grounds. The decision has been taken across board in the State. Aggrieved by the order of mass transfers, the petitioners are before this Court complaining of dislocation from their home districts.

2. In paragraph 8 of the writ petition, the 118 petitioners before this Court admit certain crucial facts and dispute others as follows:--

Though at the risk of repetition (sic repetition), it is again stated that a Constable and Head Constable can be transferred to any part of the State in view of the administrative exigencies and public interest, but the decision taken by the respondent No. 2 that Constables and Head Constables cannot be posted in their districts is highly illegal and the same is not sustainable in the eyes of law. The decision taken by respondent No. 2 cannot be justified on the ground that the transfer of the petitioners is being made on administrative ground, especially when the conscious decision dated 12.06.2013 (Annexure P-1) taken by respondent No. 2 is that no constable and head constable can be allowed to be posted in his home district. Thus, the action of the respondents in transferring

the petitioners in mass cannot be said to be justified on the ground of administrative exigency.

3. If the Constables and Head Constables can be transferred to any part of the State in public interest, it would be hard to believe that the Government does not have power in public interest and in administrative exigencies of service not to post them out of their home districts. The policy decision has caused the landslide and brought the petitioners before this Court complaining against being posted out of Yamunanagar district.

4. The opening gambit of Mr. S.S. Dinarpur, learned counsel appearing for the petitioners lies in the compass of Rule 14.47 of the Punjab Police Rules, 1934 as applicable to Haryana. He argues from rule that the prohibition of serving in home districts runs only against Inspectors and Sub-Inspectors but not Constables and Head Constables. The aforesaid rule reads as follows:--

14.47. Inspectors and Sub-Inspectors not to serve in their home districts-Except for special reasons, and with the approval of the Inspector-General in each case, no Sub-Inspector shall be posted to a permanent appointment in the district in which his home is situated. The same rule will govern the postings of Inspectors. The rule will not, however, apply to appointments to clerical posts or posts of Lines Officer or reserve Inspector, nor will it affect the posts of European Inspectors of Sergeants.

5. What is argued is that there is a statutory bar against Inspectors and Sub Inspectors of Police and they are not to serve in their home districts where their home lies except for special reasons and with the approval of Inspector General of Police. Rule 14.47, however, excludes from its operation appointments to clerical posts or posts of Lined Officer or Reserved Inspector etc. The bar contained in Rule 14.47 does not apply to Constables and Head Constables or restrict their postings to their home districts where there homes are situate. On the strength of this argument, Mr. S.S. Dinarpur, submits that there is no legal prohibition in- Rule 14.47 from posting Constables and Head Constables and in retaining them in their home districts. Nor does the rule justify such transfers as now ordered out of the home district. The argument merits rejection on simple interpretation of rule 14.47 for the reason that it does not authorize protection of the petitioners.

6. Mr. S.S. Dinarpur further argues as pleaded that though the transfer is an incidence of service but the manner in which the petitioners have been transferred en mass by the respondents is highly illegal, unjust, and arbitrary and the same cannot be allowed to be sustained in the eyes of law. In making this submission, the learned counsel does not remain alive to the settled proposition that a policy decision or an executive order can supplement rules but not supplant them. If the Rules are silent in the matter of transfer of Constables and Head Constables from their home districts, that does not mean that the Government loses power to transfer the petitioners out of their home districts

which is inherent power which flows from power to appoint and pie-served by the General Clauses Act. Once powers of the Police department are admitted by the petitioners themselves that transfers can be ordered even of a single policeman Constable and Head Constable, then the impugned order dated 12.6.2013 (P-1) cannot be faulted in its collective action. The premise on which the petition is based on arbitrary action is not legally sustainable. Arbitrariness today has to be tested on Wednesbury principles and through secondary review jurisdiction of the writ Court, which are not met since perversity and unreasonableness are not present here for this Court to strike down.

7. Merely because Rule 12.1(4) Chapter XII of Punjab Police Rules, 1934 provides that seniority of Constables and Head Constables is to be maintained by the Superintendent of Police district-wise or that their cadres are confined to the district level does not mean that their seniority in their districts of allotment would be disturbed by the impugned order while serving elsewhere in other districts in the exigencies of administration according to the wisdom of the police department. Furthermore, promotions of Head constables would be based on their seniority position in their respective parent or home districts, as the case may be. PPR, 1934 do not provide for the seniority of Constables to be maintained. Such of the constables who were promoted as Head Constables will earn further promotions in accordance with Rules. The petitioners cannot be said to be aggrieved by the impugned order in its impact. It causes no prejudice to them. It does not disturb their district-wise seniority for being deputed to the lower school course and the intermediate school course. The fact that transfers cause hardship is a phenomenon universal to all and is usually unavoidable in balancing out personal interest and larger public interest. Transfer may by its very nature disturb personal life or cause irritation but that does not denude the State to order transfers in public interest maybe to invigorate the system of policing to restore public trust. Merely because a single transfer order which is individual blind has multiple impact, would not make it arbitrary. The individual names have followed the policy (P-2). There may be good and Sufficient reasons in public interest to order the petitioners to be transferred out of their home districts and for this Court to sustain it.

8. In ordering the transfer, the whole police force has not been treated as one cadre. Their seniority is not affected district-wise. The promotion of the petitioners from Constables to Head Constables will yet be made in accordance with the principles laid down in Sub-rule 3.1(1)(2). They would be deputed to lower school course district-wise on their turn on seniority-cum-merit.

9. Mr. Dinarpur has vehemently relied on and pressed the decision of the Division Bench of this Court in Rohtash and others v. State of Mary and another, 2006 (4) RSJ 142 to contend that no transfer can be ordered outside district or range and the State has no power to do so. The Division Bench held that the entire State of Haryana cannot be considered as one cadre with respect to Constables and Head Constables since Rules 1.13, 13.7 to 13.10 read with Rule 12.1 of the PPR, 1934

contemplate various cadres at various levels. It was held that Rule 14.15 of the Rules does not deal with inter-district transfers and it operates in a different area.

10. However, the impugned order, in the present case, does not treat the entire State of Haryana as one cadre since Constables and Head Constables would retain their lien district-wise and the impugned orders only intend to transfer Constables and Head Constables from their home districts where they have abode to serve elsewhere in Haryana. It does not affect or cause prejudice to the Constables and Head Constables who are assigned districts other than their home districts. The home districts would mean nativity and residence acquired through local domicile of birth and actual or normal place of residence. The impugned order (P-1) reflects a policy decision taken and requests reference of cases to police Headquarters for proper identification and transfer outside home districts. The motion order has been issued by the Director General of Police, Haryana. Vide Annexure P-2, and a new transfer policy has been formulated and given effect to. The policy is not addressed to Constables/Head Constables who are serving outside their home districts from their initial date of enlistment district-wise. Therefore, this specific issue of transfer outside the home district was not considered by the Division Bench in Rohtash case and is, therefore, distinguishable on facts. It is well settled that an authority is a precedent for what it actually decides but not what flows from it by implication.

11. Having come to this conclusion and dictated judgment thus far I harboured doubt as to the correctness of the decision rendered by this Court in Rohtash case since Mr. Dinarpur had candidly pleaded in the writ petition that the petitioners do not dispute power to transfer Constables and Head Constables but the exercise of such power en masse was questioned as arbitrary and had at the same time addressing the Court forcefully relied upon dicta in Rohtash as binding authority and that I could not make departure. However, I thought that if power to transfer is conceded then it would run counter to the ratio laid down in 2006 in Rohtash by the division bench of this Court. I felt there was something missing in the logic of it all. I agree to specified portions of this document I therefore researched on the subject through available legal software and discovered that Rohtash was overruled by the Supreme Court on 6th October, 2010 in State of Haryana and Others Vs. Kashmir Singh and Another etc. etc., . The Supreme Court held that the State Police is one integral unit and there can be no territorial division of it. The Court considered rules 1.4, 1.5, 12.26, 14 and 15 of the Punjab Police Rules, 1934 read with the Police Act, 1861 to reach the conclusion that police personnel can be posted anywhere in the State but such transfers can be effected with the sanction of authorities mentioned in rule 12.6 so long as the incumbents seniority is not adversely affected in their home districts for further promotions.

12. It is unfortunate that an overruled judgment was cited with such flourish and vigour to deflect the course of justice.

13. The impugned order cannot be said to be contrary to law, logic or

experience. Resultantly, I find no merit in this writ petition which is plainly covered by the Supreme Court judgment. The same fails and is dismissed. Since I did not announce costs while summarily dismissing this petition I hesitate to do so now. It would have been different had I known of the Supreme Court ruling. I shudder to think that Judges while holding Court often tread dangerous ground without instant access to their legal tools in the rush of work but thankful for the time at our disposal to reflect afterword.