
(2013) 09 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46747 of 2013

Guddu Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 3 ALJ 86 : (2013) 139 FLR 719

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Vijay Gautam, learned Counsel for the petitioners and perused the record. It is contended that petitioners have been transferred by means of impugned order dated 3.8.2013 from Armed Police/Traffic Police to Government Railway Police though they have been working for more than 10 years in Armed Police/Traffic Police and, therefore, ought not to be transferred in view of Regulation 525 of U.P. Police Regulations and also the law laid down by Apex Court in *Jasveer Singh v. State of U.P. and others* 2008 (2) ADJ 484 (SC).

2. Tracing with the history of constitution of police force, I find that a General Police Force was contemplated u/s 2 of Police Act, 1861 (hereinafter referred to as the "Act, 1861") which has to perform different kinds of duties as assigned to them. Subsequently necessity felt for employment of police officials for specific or specialized jobs and therewith in the same General Police Force different branches were created and Government Railway Police Force is one of such branches of General Police Force, enrolled under Act, 1861. It became necessary in view of rules framed by Railway Board u/s 84 of Indian Railways Act, 1890, published vide notification dated 21.3.1923, which stood replaced and substituted by notification dated 19.3.1930 published in Gazette of India dated 22.3.1930. It was also facilitated by notification dated 1.4.1937 issued by

Secretary to His Excellency the Crown Representative, in exercise of power conferred by Indian (Foreign Jurisdiction) Order in Council, 1937 extending the provisions of Act, 1861 to the land occupied by Railway lines etc. with certain modification. It reads as under:

In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and of all other powers enabling him in this behalf, the Crown Representative is pleased to apply to all the lands occupied for the time being by the railway lines and portions of railway lines specified in the schedule annexed hereto, including the lands occupied by stations, by out-buildings or for other railway purposes, the provisions of the Police Act, 1861 (V of 1861), for the time being in force in the United Provinces (now Uttar Pradesh) subject to the following modifications, namely:

- (i) section 2 shall be omitted,
- (ii) the police force belonging to the United Provinces (now Uttar Pradesh) constituted in pursuance of the notification of the Government of India in the Home Department No. 447, dated the 6th March, 1912, shall be deemed to be the police force for the general police district comprising with the said lands, and
- (iii) the functions of the Provincial Government under the said Act and any other enactment relating to the police for the time being in force in that police district or any part thereof shall, subject to any orders which the Crown Representative may make in this behalf, be discharged by the Governor of the United Provinces (now Uttar Pradesh).

3. The Government Railway Police, therefore, though constitute a separate branch but formed part of General Police Force. However, in respect to some other services, the State Legislature enacted separate statutes, namely, U.P. Pradeshik Armed Constabulary Act, 1948, U.P. Fire Services Act, 1944 and those enrolled under different statutes constitute different service altogether.

4. In view of above, it cannot be doubted that petitioners are members of same police force, i.e., the General Police Force though in the exigency of duties they are being posted in different branches not recognised as independent cadres.

5. In Vinod Kumar Pandey Vs. State of U.P. and Others, the Division Bench in paras 6, 7 and 8 has held as under:

6. 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.

7. 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.

8. Now, referring to the decision of the Supreme Court in the case of Jasveer Singh (supra), the said 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.

6. The transfer of petitioner thus from Civil Police to Government Railway Police is not obstructed and on this aspect Regulation 525 has no application as held by Division Bench in Vinod Kumar Pandey (supra).

7. Even otherwise, I do not find that the impugned order of transfer has contravened Rule 525.

8. The petitioners have been transferred vide order dated 3.8.2013 passed by DIG/Additional S.P. Establishment, U.P. Police Headquarters, Allahabad from Civil Police to Government Railway Police. The order of transfer has been passed with approval of Police Establishment Board.

9. Regulation 525 regulates the power of transfer of a Superintendent of Police when a police personnel is transferred from one branch to another in certain circumstances. The aforesaid regulation of power of transfer of a Superintendent of Police will have no implication when an order of transfer is actually passed by any other or higher authority, namely, Police Headquarters, Deputy Inspector General of Police, Inspector General of Police or Director General of Police or the State Government, inasmuch as power of transfer of other authorities, we find in different other provisions of Chapter XXXIV of Police Regulations which have various provisions like, Regulations 520 and 521 etc. and all of these provisions have their independent enforceability, not subservient to Regulation 525, which regulates power of transfer of only Superintendent of Police. Since in the present case, impugned order has not been passed by Superintendent of Police but by other higher officer, namely, D.I.G., in my view, Regulation 525 is not at all attracted in the case in hand.

10. The next argument advanced by learned Counsel for the petitioners are that the impugned order of transfer is passed in violation of guidelines laid down vide various Government Orders.

11. Be that as it may, an order of violation of Government order laying down guidelines for transfer cannot be made basis for challenging the order of transfer.

12. It is now well settled that an order of transfer can not be assailed on the ground of being violative of Government Orders.

13. In Mrs. Shilpi Bose and others Vs. State of Bihar and others, dealing with a similar issue, the Apex Court said that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher

authorities in the Department.

14. In *Union of India and Others Vs. S.L. Abbas*, in para 7 of the judgment, Apex Court held as under:

The said guideline however does not confer upon the Government employee a legally enforceable right.

15. It would be appropriate at this stage to reproduce caution in the words of the Apex Court as expressed in *State of U.P. and Others Vs. Gobardhan Lal*, as under:

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fide when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

16. A Division Bench of this Court (in which I was a member) in Writ Petition No. 243(S/B)/2007, *Uma Shanker Rai v. State of U.P. and others* decided on 31.7.2007 has also taken the same view. In view of above, I find no merit in the writ petition. Dismissed.