
(2008) 08 AHC CK 0222

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 33054 and 33841 of 2008

Hanuman Prasad Pandey And Others

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Citation : (2008) 08 AHC CK 0222

Hon'ble Judges : S.K.Singh, J

Final Decision : Disposed Of

Judgement

S.K. Singh, J.—Large number of writ petitions by Constables/SubInspector working in the Civil Police, having been transferred to Government Railway Police (GRP) were filed and they are clubbed for crownpiece and now they are to be disposed of.

2. When the matters started, learned Advocate appearing for the petitioners" side and learned State Counsel also submitted that all arguments are legal/technical in nature and therefore, pleadings are not required to be exchanged and at the first hearing itself appropriate orders may be passed.

3. Sri Vijay Gautam, besides other learned Counsel argued in support of writ petitions.

4. Sri M.C. Tripathi, Addl. Chief Standing Counsel with his team of Sri Piyush Shukla and Sri Govind Saxena both Addl. Chief Standing Counsel and Sri Wasim Ali, learned Standing Counsel took charge of defending the submission of petitioners" side.

5. To deal with the submission of both sides, arguments so advanced will have to be summarised in brief:

6. Submission of learned Counsel for petitioners is that so far as Constables are concerned, all of them having worked for more than 10 years in Civil Police cannot be transferred to other Branch of the Force. It is only the civil police

constables of over two years and within ten years, they are to be transferred to other branch of force by order of the Superintendent of Police for a period not exceeding six months in a years and for any period with the permission of Deputy Inspector General.

7. In respect to class of SubInspector, submission is that although, no length of service in the police for being transferred from one branch of the force to another is provided in the relevant Regulation but that requires the sanction of Inspector General whereas in the cases in hand, there is no sanction as required.

8. In respect to the question of delegation of powers and sanction, reference has been given to a pending matter/.e. writ petition No. 9239 of 2008 in which on 26.2.08, counter affidavit has been directed to be filed and interim protection has been given. It is also submitted that in respect to officers, as the Regulation requires sanction of Inspector General, even if Deputy Inspector General has passed the orders, it cannot be accepted to be with his sanction as there is a difference between sanction and delegation of powers.

9. Argument is that transfer from Civil Police to other branch of force is governed by Para525 of U.P. Police Regulations.

10. To support the aforesaid submission, in the light of Para 525 of Regulation, main emphasis was given on the Judgment of the Apex Court given in the case of Jasbeer Singh v. State of U.P. and others, 2008(2) ADJ 484.

11. It was then pointed out that on similar issue that constables having more than ten years service in the police cannot be transferred to another branch of force, this Court granted interim protection and counter affidavit has been directed to be filed. The order of this Court dated 5.3.2008 and 22.4.2008 passed in writ petition No. 5557 of 2008 and writ petition No. 426 of 2008 respectively were shown to the Court.

12. The order passed by this Court in writ petition No. 426 of 2008 is hereby quoted:

"Learned Counsel for the petitioners has; submitted that the petitioners have served more than ten years as Constables in Civil Police and they cannot be transferred to another branch of Police under Regulation 525 of U.P. Police Regulation. In support of his submission he has also placed reliance upon a decision of Hon"ble Apex Court dated 23rd January, 2008 rendered in Jasveer Singh v. state of U. P. and others, in Special Leave to Appeal No. 6853 of 2004. The submission of learned Counsel for the petitioners requires considerations by this Court. Therefore, the respondents are directed to file counter affidavit within four weeks.

List thereafter.

Until further orders of this Court, the effect of transfer order of petitioners dated 7.12.2007 passed by respondent No. 4, contained in Annexure 1 of the writ

petition, so far as it pertains to the petitioners of instant case, shall remain stayed.

Sd/ Sabhajeet Yadav, J. 22.4.08"

13. Besides aforesaid orders passed in the writ petitions noted above, in large number of other writ petitions, similar orders are passed and the writ petitions are still pending.

14. It is also to be noticed that on the question of sanction of Inspector General in writ petition No. 9239 of 2008, this Court has granted interim protection to the petitioner. The interim protection given by this Court is quoted :

"By the impugned order the petitioner has been transferred from Civil Police to G.R.P.

The contention of learned Counsel for the petitioner is that the transfer has been made without sanction of the I.G. in violation of Regulation 525 of Police Regulations. He has also contended that there is a difference between the delegation and sanction and, therefore, even if the power of transfer has been delegated it would not amount sanction by the I.G.

Standing Counsel prays for and is allowed a months time to file counter affidavit. Two weeks thereafter are allowed to the petitioner to file rejoinder affidavit.

Connect and list for admission along with Civil Misc. Writ Petition No. 32940 of 2007 (Mahesh Singh v. state of U. P. and others) and Civil Misc. Writ Petition No. 7609 of 2008 (Basant Kumar v. State of U.P. and others).

Until further orders, the operation of the impugned order dated 27.6.07 in so far as petitioner is concerned, shall remain stayed.

Hon"ble Pankaj Mithal, J"

15. Besides aforesaid orders passed in the writ petitions noted above, in large number of other writ petitions, similar orders are passed and the writ petitions are still pending.

16. It is also argued that in view of judgment of Apex Court given in the case of Prakash Singh v. Union of India, (2006) 8 SCC 1, transfers are to be carried out on the recommendation/decision which is to be taken by a Board which was required to be constituted which is not here.

17. In response to the aforesaid, State side submits that heavy reliance placed on the judgment of Apex Court in Jasveer Singh (supra), may not be available to the facts of the present case as that was a transfer of Constable from Civil Police to Armed Police and other cases also, on which reliance is being placed by petitioners" side, are transfer from Civil Police to Armed Police and there is no decision by this Court in which interference was made in relation to transfer from Civil Police to G.R.P. It is further submitted that G.R.P. is just a parallel branch of Civil Police as nature of work is same, i.e. to maintain law and order and it is in

the Armed Police, the nature of work can be different. It is further submitted that delegation of powers to the Deputy Inspector General has been found to be valid and transfer orders passed accordingly were not interfered by this Court in several decisions.

18. So far as the constitution of Board is concerned, Sri Tripathi, learned Addl. C.S.C. pointed out that on 12.3.2008, Board has been constituted and in fact, all the orders were passed after the Board's meeting which took place on 21.5.2008 about which, proceeding of the meeting of the Board was shown to the Court.

19. To deal with the issue, we are to refer Para525 of U.P. Police Regulations which is to be quoted here :

Para525:

"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 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 ff force to another or from the police service of other Provinces to the Uttar Pradesh Police requires the sanction of the Inspector General.

20. After referring to the aforesaid Regulation, we are to consider the situation wherein the transfer is made of a civil police constable having more than ten years" service and the transfer of a SubInspector from civil police to another branch of force if is without sanction of Inspector General.

21. There cannot be any dispute now to the fact that Para525 of the Police Regulations has been held to have statutory force as that is framed under Section 46 of Police Act, 1861. The Apex Court has clearly held in the judgment noted above that second part of Regulation 525 gives powers only in respect to Police Officer and not to a police constable. So far as police constables are concerned, they are covered by first part of the Regulation 525.

22. If this is accepted, then there is clear provision in the aforesaid Regulation, permitting transfer of a civil police constable of over two years" service and under ten years" service. The question will be that whether a civil police constable having completed that length can be transferred to another branch of force or not.

23. Here the submission of Sri Tripathi is that nature of work being same in the civil police and the G.R.P., they are to be taken to be one class/force and thus

the shifting from civil police to G.R.P. is not to be treated to be a transfer to another branch of the force.

24. This can be a matter for consideration. This very question has been posed by this Court in two pending matters i.e. in writ petition No. 426 of 2008 and writ petition No. 5557 of 2008 as referred above.

25. In respect to question/controversy regarding delegation of powers and there has to be a sanction of Inspector General, this Court has posted the question for being decided in writ petition No. 9239 of 2008 referred above.

26. Regulation 525 of the Police Regulations has been held to be statutory in character and thus question in respect to both issues i.e.

(i) the transfer of a civil police constable of over ten years' service to other branch of force; and

(ii) the transfer of a Sub Inspector in the civil police, without sanction of Inspector General; a

having already been posed for being decided in the writ petitions referred above, this Court is also of the view that both questions are to be decided on a later date, as and when complete pleadings are there, placing on record all needed documents, dealing with the issue.

27. This Court has occasion to see an order of learned Single Judge of Lucknow Bench passed on 28.7.08 in writ petition No. 4109 of 2008(S/S) by which writ petition by same class was disposed of by giving direction to the competent authority to pass fresh order keeping in mind the judgment of the Apex Court in relation to constitution of Board. The decision relates to transfer from Civil Police to G.R.P. In the final direction, it was also made clear that till fresh/amended orders are passed, the orders of transfers will be kept in abeyance.

28. Accordingly, this Court is to post the matter for a later date with a direction to the respondents to file their exhaustive counter affidavit within ten days and petitioners are to file rejoinder affidavit within one week thereafter.

29. List this matter in the week commencing 18.8.2008.

30. On the facts and keeping in mind, the orders passed in other pending writ petitions touching both issues, it is provided as an interim measure that till the next date of listing, status quo as exists today in respect to petitioners (i.e. civil police constables of over ten years' service and the SubInspectors in the civil " police) shall be maintained.

31. However, so far as SubInspectors are concerned, it is always open for the respondents to pass fresh orders, if it is so desired after the sanction of Inspector General and if that is done, then interim protection given by this order in respect to that class will cease to operate.