

(2009) 07 AHC CK 0146
In the Allahabad High Court

Mehboob Alam and others.

APPELLANT

Vs

State of U.P.And others.

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0146

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

Ritu Raj Awasthi, J.—Heard Sri A.P. Singh, learned counsel for the appellant and Smt. Sangeeta Chandra, learned counsel for the State.

2. A bunch of writ petitions has been decided by a common order dated 9th October 2007 passed by the learned Single Judge dismissing their challenge to transfer from Civil Police to Government Railway Police (G.R.P). The appellants were posted as Constable in U.P. Civil Police Department.

3. The delay in filing the special appeal has been condoned.

4. The special appeal has been filed not by all, but few of aggrieved petitioners in those writ petitions.

5. Before the learned Single Judge a specific plea was taken that in terms of

6. Regulation 525 of U.P. Police Regulations, the transfer order could not have been passed of these appellants, who are constables of more than ten years of service, with prior approval of the Deputy Inspector General of Police as the Director General of Police is the authority to grant approval.

7. The said plea was contested by the State asserting that there was valid delegation of powers with the Deputy Inspector General of Police and therefore, the orders have rightly been passed with the prior approval in terms of second part of Regulation 525 of U.P. Police Regulations.

8. In the special appeal only a pure legal plea has been taken that second part of

Regulation 525 of U. P. Police Regulations is not at all applicable nor can be put to use in the matter of transfer of police constables as it confines itself only to police officers.

9. Smt. Sangeeta Chandra appearing for the State has submitted in response that police officers, of whatever rank they are, are the police constables and for this, she relies upon the provisions of sections 7, 8, 9, 13, 22, 23, 24, 25, 27, 28 of the U.P. Police Act, 1851. Her submission is that the U.P. Police Act, 1861 does not define "the police officer" but all police personnel have been referred as "police officer", which according to her also includes the "police constables" though there are subordinate police personnel and superior rank police personnel.

10. 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 can not be a complete embargo in exercise of such power.

11. 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 viceversa. 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 viceversa 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 InspectorGeneral.

12. 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 InspectorGeneral".

13. Learned counsel for the appellant has placed reliance upon the case of Jasveer Singh vs State of U.P. And others i.e. Civil Appeal No. 622 of 2008 decided 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.

14. 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.

15. 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.