

(2014) 03 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 616 of 2011

Om Prakash Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Constitution of India, 1950 — Article 311
Police Act, 1861 — Section 2, 20, 22, 23, 3

Citation : (2014) 3 ESC 1711

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Uma Nath Singh, J.; Dr. D.K. Arora, J

Bench : Full Bench

Advocate : A.P. Singh, Advocate for the Appellant; Sangeeta Chandra, Addl. CSC, Advocate for the Respondent

Judgement

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Dr. Dhananjaya Yeshwant Chandrachud, C.J.—On 2 September 2011, a Division Bench of this Court has referred two questions of law for consideration of the Full Bench:

"(1) whether a police constable working in the civil police who has rendered service for more than ten years cannot be transferred to another branch in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations in view of the decision of the Supreme Court in *Jasveer Singh v. State of U.P. and others*, 2008(2) ADJ 484 (SC): 2008(1) ESC 158 (SC).

(2) Whether the government railway police and civil police constitute one cadre or different service cadres."

The controversy before the Court revolves around the provisions of Regulation 525 of the Uttar Pradesh Police Regulations. Regulation 525 provides as follows:

"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.

2. In. order to facilitate an analysis of Regulation 525, it would, at the outset, be appropriate to breakdown several parts of the Regulation into separate sentences. We now proceed to do so:

"(i) A constable of less than two years" service may be transferred by the Superintendent of Police from the armed police to the civil police or from the civil police to the armed police;

(ii) Foot police constables may be transferred to the mounted police at their own request;

(iii) A civil police constable with more than two years" service but less than ten years" service may be transferred to the armed police and vice versa by the Superintendent of Police for a period not exceeding six months in one year;

(iv) Armed police constables with over two years" service may be transferred to the other branch of the force with the permission of the Deputy Inspector General;

(v) Civil police constables of over two years" service and under 10 years" service may be transferred to the other branch of the force with the permission of the Deputy Inspector General; and

(vi) In all other cases transfers 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."

3. The petitioners before the Court are constables of the civil police who have put in more than 10 years of service. The orders which they have challenged are orders of transfer from the civil police to the government railway police. Hence, the first question which has been framed for the decision of the Full Bench arises from the submission of the petitioners that constables of the civil police who have put in more than ten years" service cannot be transferred to the government railway police.

4. The first paragraph of Regulation 525, inter alia, stipulates conditions of transfer of constables from the civil police to the armed police and vice versa in a

situation where they have put in varying period of service, these being (i) service of not less than two years; (ii) service of more than two years but less than ten years. Where a constable has put in less than two years of service, Regulation 525 enables his transfer, from the civil police to the armed police or vice versa, the condition being that the transfer has to be by the Superintendent of Police. Where a civil police constable has put in more than two years' service but less than ten years of service, Regulation 525 provides for two situations of transfer: depending upon the period of transfer, the power to effect the transfer is conferred either upon the Superintendent of Police or, as the case may be, on the Deputy Inspector General. Where the transfer is for a period not exceeding six months for any one year, the power to make the transfer is conferred upon the Superintendent of Police. Where, however, the transfer is to the other branch of the force and it is proposed to transfer a civil police constable for any period, meaning thereby a period in excess of six months in a year, the stipulation is that the permission of the Deputy Inspector General must be obtained. Hence, where the term of service which has been put in by a police constable is less than two years, the Superintendent has the power to transfer such a person from the armed to the civil police and vice versa. Where the period of service of a civil police constable is of more than two years but less than ten years, it is again the Superintendent of Police who is empowered to transfer but this time there is a stipulation that the period of transfer cannot exceed six months in a year. In all other cases, not covered by the first part, when a transfer is sought to be effected from one branch to another branch of the force, the permission of the Deputy Inspector General has to be obtained.

5. The first paragraph of Regulation 525 does not deal with a situation where a civil police constable with more than ten years of service is sought to be transferred. The petitioners assert that since civil police constables are specifically mentioned in the first paragraph of Regulation 525 but are not mentioned in the second paragraph, they would not fall within the purview of the residuary provisions of the second paragraph of Regulation 525.

6. Now, what the second paragraph of Regulation 525 stipulates is that in all other cases, the transfer of police officers from one branch of the force to another requires the sanction of the Inspector General. The second paragraph of Regulation 525 is obviously residuary in nature, commencing as it does with the phrase "in all other cases". That expression must necessarily mean cases which are not covered by the first part of Regulation 525. The issue then which falls for our consideration is whether the expression "transfer of police officers" from one branch of the force to another would cover civil police constables. That, in turn, would require the Court to construe the expression "police officer" in the second paragraph of Regulation 525. In order to do so, it would be necessary now to turn to some of the relevant provisions of the Uttar Pradesh Police Regulations. Regulations 396 to 427 form part of Chapter XXIX which deals with appointment. Regulation 396 provides as follows:

"396. The Police Force. The Police Force consists of the following bodies:

- (1) Provincial Police, Civil, Armed and Mounted.
- (2) Government Railway Police
- (3) Village chaukidars

"Appointed and enrolled under Act V of 1861

Appointed in Agra under Act XVI of 1873 and in Oudh under Act XVIII of 1876.
Not enrolled under Act V of 1861.

7. Regulations 397 and 398 are in the following terms:

"397. The gazetted officers of the Force are :

- (1) Inspector-General.
- (2) Deputy Inspectors-General.
- (3) Superintendents.
- (4) Assistant Superintendents.
- (5) Deputy Superintendent.

398. The non-gazetted officers of the Force are :

- (1) Inspectors.
- (2) Sub-Inspectors.
- (3) Head Constables.
- (4) Constables."

8. Regulation 396 indicates that the police force consists of the provincial police, civil, armed and mounted police; government railway police and village chaukidars. The officers of the police force consist of gazetted officers and non-gazetted officers. Gazetted officers are those stipulated in Regulation 397 while non-gazetted officers of the force are those stipulated in Regulation 398. Regulation 398 would indicate that for the purposes of the Regulations, Inspectors, Sub-Inspectors, Head Constables and Constables are regarded as officers of the force though they are of a non-gazetted category. Regulations 406 and 407 provide for appointments and promotions. Constables fall within the definition of officers, albeit non-gazetted officers.

9. Chapter XXXII of the Regulations provides for departmental punishment and criminal prosecution of police officers. Regulation 478 provides that all police officers appointed under Section 2 of the Police Act are liable to departmental punishments as prescribed therein. In addition, certain specified penalties may also be imposed on Head Constables and Constables and on Constables exclusively.

10. Regulation 525 to which we have already referred forms part of Chapter XXXIV of the Regulations which deals with transfer. Regulation 524 provides that the Superintendent may, within his district, transfer all officers of and below the rank of Inspector. Then follows the provisions of Regulation 525. These provisions of the Regulations would make it abundantly clear that the expression "police officer" in the Regulations has been used in a broad and inclusive sense and does not exclude constables. The Regulations, in fact, would indicate that the expression "officers of the force" includes Constables, Head Constables, Sub-Inspector and Inspectors who are non-gazetted officers of the force.

11. This interpretation is consistent with the provisions of the Police Act, 1861. The Act, as its cause title indicates, is an Act for the regulation of the police. The preamble states that it was expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime. Section 2 of the Act provides for the constitution of the force and is as follows:

"2. Constitution of force.--The entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act the pay and all other condition of service of members of the subordinate ranks of police force shall be such as may be determined by the State Government."

12. Section 3 stipulates that the superintendence of the police throughout the district shall vest in and shall be exercised by the State Government to which such district is subordinate. Section 7 provides that subject to the provisions of Article 311 of the Constitution and to the rules framed by the State Government, the Director General/Inspector General, Deputy Inspectors General, Assistant Inspectors General and District Superintendence of Police may, at any time, dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think fit as remiss or negligent in the discharge of his duties or unfit for the same. Section 8 provides that every police officer appointed to the police force other than officers mentioned in Section 4 shall on his appointment receive a certificate in the form annexed to the Act. Section 20 provides that police officers enrolled under the Act shall not exercise any authority, except the authority provided for a police officer under the Act and any Act which shall thereafter passed for regulating criminal procedure. Section 22 provides that every police officer shall, for all purposes in the Act contained, be considered to be always on duty and may at any time be employed as police officer in any part of the general police district Section 23 provides for duties of police officers as follows:

"23. Duties of Police Officers.--It shall be the duty of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by

any competent authority, to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every Police Officer, for any of the purposes mentioned in this Section without a warrant, to enter and inspect any drinking shop; gaming-house or other place of resort of loose and disorderly characters."

The interpretation which we have placed on the provisions of Regulation 525 is consistent with the provisions contained in the Police Act, 1861.

13. Now, it is in this background that it is necessary to consider the judgment of the Supreme Court in Jasveer Singh's case and the two judgments of the Division Benches in Mehboob Atom v. State of U.P. and others, Special Appeal No. 302 (S/B) of 2009 and Vinod Kumar Pandey Vs. State of U.P. and Others, .

14. In Jasveer Singh (supra), a learned Single Judge of this Court had dismissed a petition challenging the transfer of the appellant from the civil police to the armed police. The judgment of the Single Judge was affirmed by the Division Bench. The Supreme Court noted that it as admitted that the appellant had put in more than ten years" service. Hence, it was held that the order of the Superintendent of Police transferring him from the civil police to the armed police was invalid since he did not have the power in terms of Regulation 525. The Supreme Court observed as follows:

"Regulation 525 clearly contemplates that a constable of less than two years service may be transferred from the armed to the civil police or vice versa by the Superintendent of Police. Foot Police 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. Thus it is clear that the Superintendent of Police can transfer any constable from the armed police to the civil police and vice versa who have put in over two years and less than ten years" service for a period not exceeding six months in any one year and armed police constables of over two years" service and civil police constables of over two and under ten years" service may be transferred to 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 requires sanction of the Inspector General."

15. Hence, this was a case where a constable in the civil police who had more than ten years of service was transferred to the armed police by the Superintendent of Police. This was a power which plainly the Superintendent of

Police did not possess. The Superintendent of Police could transfer a constable of less than two years" service from the armed to the civil police or vice versa. A civil police constable who had more than two years but less than ten years" service could be transferred to the armed police and vice versa by the Superintendent of Police for a period not exceeding six months in one year. The Superintendent of Police had, therefore, clearly exceeded his powers in transferring a civil police constable to the armed police though he had put in more than ten years" service. The counsel for the State, however, sought to contend that in the second part of the Regulation, a general power has been conferred to transfer any police officer from one branch to another with the prior sanction of the Inspector General. This submission was not accepted by the Supreme Court holding that a police constable was covered by the first part of Regulation 525 and consequently would not be governed by the second part.

16. After the judgment of the Supreme Court in Jasveer Singh's case (supra), two Division Bench judgments in Mehboob Alam and Vinod Kumar Pandey (supra) also dealt with the question. Mehboob Alam's case involved a situation where the Single Judge had dismissed a batch of petitions challenging transfers of civil police constables to the government railway police. In the special appeal, a pure legal plea was taken that the second part of Regulation 525 would not be applicable in regard to the transfer of police constables as it was confined only to police officers. On the other hand, it was urged on behalf of the State, relying upon the provisions of the Uttar Pradesh Police Act, 1861 that all police personnel have been referred to as police officers and for the purposes of the Act, the expression "police officer" would include "police constable". It was urged that an interpretation should not be adopted by which police constables who have put in more ten years of service in a particular branch are immune from transfer to another branch which would result in a detriment to police discipline as well as to the need to maintain law and order and security. The Division Bench held that in view of the judgment of the Supreme Court in Jasveer Singh's case, it could not be said that the appellants who are constables having put in more than ten years" service in the civil police could have been transferred under the second part of Regulation 525 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 was allowed. In Vinod Kumar Pandey (supra), the appellant who was a constable in civil police was transferred to the government railway police and his challenge was that as he was in the civil police for more than ten years, he was immune from transfer to the government railway police. The learned Single Judge dismissed the petition. In appeal, reliance was placed on the judgment of the Supreme Court in Jasveer Singh's case. The Division Bench held as follows:

"... 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 of 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 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 Jasveer Singh (supra) is absolutely misconceived."

The view which was taken by the learned Single Judge was consequently affirmed.

17. Jasveer Singh's case involved a situation where a constable who had put in more ten years' service was transferred from the civil police to the armed police by the Superintendent of Police. Plainly, the Supreme Court held that the Superintendent of Police had no power to effect such a transfer. Moreover, Jasveer Singh's case clearly did not involve a situation where a civil police constable was sought to be transferred to the Government Railway Police which is another branch of the same force. The government railway police is a branch of the police force. Regulation 396 of the Regulations specifically stipulates that the police force consists of (i) provincial police, civil, armed and mounted; (ii) government railway police; and (iii) village chaukidars. Moreover, Regulation 397 defines who constitute the gazetted officers of the force, while Regulation 398 which defines the constitution of non-gazetted officers of the force includes Inspectors, Sub Inspectors, Head Constables and Constables. The Government Railway Police Manual is stated to have been printed by the Government Railway Printing Press in 1942 and contains Regulation regarding the general administration of the railway police. The Manual prescribes that the government railway police is a separate branch of the general police force under Act V of 1861. The government railway police being a branch of the police force, the Manual refers to various chapters of the Police Regulations and Office Manual for Superintendents of Police. The recording of crimes, reporting thereof, investigation and trial are all in accordance with the Regulations relating to the civil police in the Police Regulations. Para 8 of the GRP Manual gives the same powers and duties to an Inspector of the GRP as given to an Inspector of the civil police under Chapter IV of the U.P. Police Regulations. Para 11 requires Sub Inspectors, Head Constables and Constables to perform the duties contained in Chapter V of the Police Regulations insofar as they are not incompatible with the special conditions of railway police work. Chapter II of the GRP Manual refers to general office administration which is the same broadly as the Office Manual for Superintendents of Police. Chapter III of the GRP Manual refers to the registration and investigation of crime. Paras 31, 33, 35 and 39 specifically set out the same procedure as applicable under Chapter V of the Police Regulations applicable to the civil police. The government railway police is involved in the

prevention, detection and investigation of crime, as are members of the civil police. On the other hand, the duties of the armed police are specified in Chapter VI of the Police Regulations.

18. In view of the decisions of the Supreme Court in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, and 965212--> , it is a well settled principle of law that a statutory provision should not be read in isolation but should be construed with reference to the context and the other provisions of a Statute, to make a consistent reading of the whole. Similarly, a construction should not be placed on a statutory provision which would lead to a manifest absurdity. (See : H.S. Vankani and Others Vs. State of Gujarat and Others, . The view which we have taken would accord with the basic principles of statutory construction. The Court should, without rewriting the statutory provision, adopt a purposive construction which promotes the efficacy of the police force and ensures the maintenance of discipline.

19. For these reasons, we answer the questions which have been referred to the Full Bench in the following terms:

"(i) A police constable working in the civil police who has rendered service for more than ten years can be transferred to another branch, as explained above, in view of the provisions of Regulation 525 of the Uttar Pradesh Police Regulations;

(ii) The government railway police is a branch of the police force and hence the transfer of a civil police computable who has put in more than ten years" service to the government railway way police would not be prohibited, subject to compliance with the norms (sic) in Regulation 525 of the U.P. Police Regulation."

20. The reference is answered accord. The special appeal shall now be placed before the appropriate Court in (sic). with the raster of work.