

(2012) 12 AHC CK 0196

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62128 of 2012 Connected with Civil Miscellaneous Writ Petition No"s. 47540 of 2012, 61176 of 2012, 57403 of 2012, 58638 of 2012, 60086 of 2012, 63152 of 2012 and 60825 of 2012

Rakesh Kumar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2013) 3 ADJ 576 : (2013) 1 UPLBEC 174

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.D. Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—In this group of petition the basic grievance of the petitioners is that they have been transferred from Civil Police to G.R.P. and have completed more than three years but are not being relieved nor are they being sent back to their original place of posting. In Writ Petition No. 62128 of 2012, the petitioner contended that he was appointed as a Constable in Civil Police. In 2009, the petitioner was transferred from Civil Police to G.R.P. for a period of three years. The transfer order indicated that upon completion of the period of three years, the petitioner would be sent back to the Civil Police without any further order. This transfer order was passed on the basis of the circular dated 30.5.2008, which stipulated that the persons who are being transferred from Civil Police to G.R.P. would be sent back to the Civil Police upon completion of three years of service in the G.R.P. The petitioner contended that he completed three years in August, 2011 but has not been relieved, and now, by the impugned order dated 17.11.2012, the petitioner has been transferred to Another place in G.R.P. The petitioner, being aggrieved, by the transfer order has filed the present writ petition.

2. In Writ Petition No. 47540 of 2012, the petitioners were transferred from Civil Police to G.R.P. and, upon completion of three years in G.R.P. have not been relieved. The petitioners filed the writ petition which were disposed of directing the petitioners to make an appropriate representation. Based on the directions of the Court the petitioners made a representation which was rejected by an order dated 1.8.2012, on the ground, that in view of the circular dated 2.3.2012 the petitioner would be transferred in the order of seniority, meaning thereby, that those persons who were transferred earlier to G.R.P. would first be relieved and, in that chronological order, the petitioner would be relieved as and when his turn would come. The petitioners, being aggrieved by the rejection of their representation, have filed the present writ petition.

3. Similar grievance is of the petitioner in Writ Petition No. 57403 of 2012. In Writ Petition No. 58638 of 2012, 68025 of 2012 and 61176 of 2012 the petitioners have praying for a writ of mandamus commanding the respondents to relieve the petitioners in terms of the transfer order upon completion of three years in G.R.P. Writ Petition No. 63152 of 2012 relates to a Sub Inspector, who has also filed a representation before the authority praying that he should be relieved upon completion of three years in G.R.P..

4. The Director General of Police (hereinafter referred to as "D.G.P.") has filed an affidavit in Writ Petition No. 62128 of 2012. The Deputy Superintendent of Police (Railways) has filed a counter affidavit in Writ Petition No. 47540 of 2012. The learned standing Counsel stated that since the controversy involved in all the writ petitions are the same, the counter affidavit already filed may be read in other writ petitions.

5. D.G.P. in his affidavit submitted, that the work and duties in the Civil Police and Railway Police are the same and that the duties in the armed police are different. It was further stated that the transfer from Civil Police to G.R.P. takes place only upon a requisition being made from G.R.P. and that the competent authority, namely, the Deputy Inspector of Police (Establishment) calls for names from different districts and persons who fulfills the criteria are sent to G.R.P. for a stipulated period. The D.G.P. has further contended that the G.R.P. does not have its own force and that Civil Police Constables, Head Constables and Sub Inspectors are sent to G.R.P.

6. The D.G.P. in his affidavit has further contended that earlier a policy decision was taken that Constables, Head Constables and Sub Inspectors would be sent to G.R.P. only for three years but the said policy was modified by circular dated 2.3.2012, in which it was decided that persons who are working in G.R.P. would be repatriated to the Civil Police upon completion of three years of service in G.R.P. according to their seniority.

7. The D.G.P. has further submitted in his affidavit, that persons who have been transferred from Civil Police to G.R.P. have filed various writ petitions before the Allahabad High Court and before the Lucknow Bench and have obtained interim

orders, as a result adequate police personnels could not be sent to G.R.P. on account of which persons already posted in G.R.P. could not be relieved. The D.G.P. further submitted, that as and when persons are sent to G.R.P., the police personnels already working in G.R.P., would be relieved on the basis of their seniority. In this regard the D.G.P. has indicated that out of 2570 Constables, who are required to be posted in G.R.P., 1370 Constables have not joined and that 1407 Constables posted in G.R.P. are liable to be repatriated since they have been completed three years of service in G.R.P. It has also been stated that 2570 Constables in Civil Police has been transferred to G.R.P. and only 1463 Constables have reported for joining. Similar is the position of Head Constables and Sub Inspectors. In view of the aforesaid averments the D.G.P. has tried to justify its stand in not relieving the petitioners. Similar stand has been taken by the Deputy Inspector General of Police in the counter affidavit filed in Writ Petition No. 47540 of 2012.

8. Having heard the learned Counsel for the petitioner and the learned standing Counsel, the Court is not at all impressed by the stand taken by the respondents. The respondents are bound to comply with the terms and conditions mentioned in the transfer orders. The transfer orders were patently clear, namely that the police personnels, who are being transferred from Civil Police to G.R.P. would be repatriated again to Civil Police immediately upon completion of three years of service in G.R.P. This condition imposed in the transfer order was passed on the basis of the circular of the respondents dated 30.5.2008. The stand of the respondents that the circular dated 30.5.2008 has been modified and therefore, the petitioners cannot be transferred is patently misconceived. The modification made by the respondents as per the circular dated 2.3.2012 can only be made prospective and cannot apply to those police personnels who had already been transferred as per the circular dated 30.5.2008.

9. In the light of the aforesaid, the action of the respondents in not relieving the petitioners who have completed 3 years of service in G.R.P. is wholly arbitrary. The action of the respondents in rejecting their representation cannot be sustained.

10. The contention of the respondents, that there is adequate shortage of staff in G.R.P., on account of interim orders being obtained by the Constables, Head Constables and Sub Inspectors, cannot be accepted. The mere fact that certain writ petitions have been filed, wherein interim orders have been passed, does not mean that adequate number of police personnels cannot be posted in G.R.P. The respondents are clearly abdicating their duties in the garb of certain interims orders being passed by the Court. The respondents are duty bound to post their police personnels in G.R.P. and it is their responsibility irrespective of interim orders being passed by the High Court. The respondents cannot take shelter of the interim order and contend that they are unable to post any police personnel in G.R.P. As per the affidavit of the D.G.P. about 100 writ petitions are pending before the Allahabad High Court and 90 petitions are pending before the

Lucknow Bench. These figures are minuscule compared to the number of police personnels working in the U.P. Police force. The Court finds that it is very easy to point finger at Others not realizing that four fingers are pointing to oneself. The Court is of the opinion, that the stand taken by the respondents is clearly an afterthought and is also in gross violation of the order dated 30.7.2012, passed in Writ Petition No. 36618 of 2012, Shanaj Haidar Zaidi and Others v. State of U.P. and Others, and order dated 30.7.2012 passed in Writ Petition No. 36616 of 2012, Sanjeev Kumar Tyagi and Others v. State of U.P. and Others, and order dated 1.8.2012 passed in Writ Petition No. 37305 of 2012 Dinesh Kumar Tiwari and Others v. State of U.P. and Others, wherein the Court directed that upon completion of three years of service in G.R.P. persons posted in the G.R.P. would be called back immediately.

11. It is noteworthy to state here that the writ petitions filed before this Court questioning the transfer from Civil Police to G.R.P. has been decided by this Court by judgments dated 3.12.2012 and 6.12.2012 passed in writ petition Nos. 57117 of 2012, Chandra Shekhar Rawat v. State of U.P. and Others and in Writ Petition No. 56469 of 2012, Dev Nandan Upadhyaya v. State of U.P. and Others. On the basis of the aforesaid judgments, a large number of writ petitions have been dismissed. Consequently, the Court finds that there would be no problem for the respondents now to post adequate police personnels in G.R.P.

12. In some of the writ petitions an allegation had been made that the respondents are not complying with their circular dated 2.3.2012 and that a pick and chose policy is being adopted and personnels in G.R.P. are not being relieved in the order of their seniority. Such allegations have been made in Writ Petition Nos. 61176 of 2012 in which no counter affidavit has been filed and the averments remains unrebutted.

13. In the light of the aforesaid, the action of the respondents in transferring the petitioners again from one place in G.R.P. to Another place in G.R.P. is patently illegal. The respondents were bound to transfer these petitioners back to the Civil Police and could not allow them to continue in G.R.P. The respondents were liable to transfer them back to the Civil Police as per the transfer orders. In the light of the aforesaid, the writ petition is allowed. The order dated 17.11.2012 passed in Writ Petition No. 62128 of 2012 is quashed. A writ of mandamus is issued in the said writ petition and in all the connected writ petitions directing the respondents to relieve the petitioners upon their completion of three years of service in G.R.P. and post them in Civil Police within four weeks from the date of the production of a certified copy of this order.