

(2011) 03 AHC CK 0093
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 18482 and 18840 of 2011

Uma Shankar Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 162, 226

Police Act, 1861 — Section 2

Uttar Pradesh Civil Police Constable and Head Constable Service Rules, 2008 — Rule 26

Uttar Pradesh Police Regulations, 1948 — Regulation 520, 521, 522, 523, 524

Citation : (2011) 4 ADJ 493

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioners, who are members of police force and have been transferred from one district to another in the State of U.P., have rushed to this Court, questioning the validity of transfer orders. Along with the said challenge so made, the Petitioners have also proceeded to challenge the Government Orders dated 11.7.1986 and 19.2.2010 issued by the Secretary, Home, U.P. Government, Secretariat Lucknow and further prayer has been made to stay the effect and operation of Clause-5 of the Transfer Policy dated 21.4.2010 issued by the Chief Secretary, U.P. Government, Lucknow and for quashing of Clause 2(1) of the impugned order dated 25.3.2011 issued by the Inspector General of Police, Establishment, Lucknow.

2. Brief background of the case as reflected from the record is that in order to ensure police reform Hon'ble Apex Court, took the initiative and framed various guidelines in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, . Pursuant thereto Police Establishment Board was constituted, and transfer was sought to be effected, based on the same, then writ petition was filed wherein interim order dated 7.5.2010 was passed. The State of U.P. filed Special Appeal No. 850 of 2010 against the grant of the said interim order. In Special

Appeal, it was urged by learned Counsel for the Petitioners-Respondents that the constitution of the Board for transfer of Constables was not in accordance with the directions given by the Supreme Court in Prakash Singh (supra) as it was not presided by the Deputy Inspector General of Police but by Additional Director of Police. This contention was accepted in Special Appeal and the interim order was found to be justified for this reason. The relevant observations are as follows:

We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. We find that even if the learned Single Judge has stayed the order of transfer of the Respondents on the ground that the Board has not applied its mind and has acted mechanically, the issue raised by Sri Vijay Gautam, learned Counsel for the Respondents that the Board was not properly constituted, goes to the very root of the matter and if this Court comes to the conclusion that the Board was not properly constituted in terms of the direction given by the Hon"ble Supreme Court, the entire order of transfer stood vitiated. The order passed by the learned Single Judge would be justified, though on a different ground.

...

In view of the foregoing discussions we are of the considered opinion that the Board which had considered and approved the transfer order in question was not constituted in accordance with the specific directions given by the Hon"ble Supreme Court and, therefore, the transfer order has not been passed in accordance with law.

(emphasis supplied)

3. This decision rendered in this Special Appeal was placed before another Division Bench hearing Special Appeal No. 1093 of 2010 which, after noticing the conflict of views in two Division Bench judgments of the Court in Shishu Pal Singh v. State of U.P. and Ors. 2010 (3) ADJ 241 (DB) and Special Appeal No. 850 of 2010 State of U.P. and Ors. v. Jagannath Prasad Gaur and Ors., decided on 28th May, 2010 arising out of the interim order passed on 7th May, 2010 in this writ petition, referred the matter to the Full Bench to answer the following issue:

(i) Whether pursuant to framing of the U.P. (Civil Police) Constable and Head Constables Service Rules, 2008, the directions issued by the Supreme Court in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, in exercise of power under Article 142 of the Constitution of India, are no longer applicable in view of what is set out in paragraph 31 of the judgment?

4. The Full Bench answered the reference by the order dated 18th August, 2010. It was pointed out by the learned Standing Counsel that looking to the strength of the Police Constables, it was not possible for the State Government to appoint one Board pursuant to the directions issued by the Supreme Court in Prakash Singh (supra) and so the notification dated 12th March, 2008 was issued

constituting four different Boards for various ranks of police personnel. The State had also drawn the attention of the Full Bench to the U.P. (Civil Police) Constable & Head Constable Service Rules, 2008 (hereinafter referred to as the "2008 Rules"), particularly to Rule 26 which provides that in regard to the matters not specifically covered by the Rules or special orders, persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government Servants serving in connection with the affairs of the State and it was pointed out that transfer was covered by Regulations 520 to 526 of the UP. Police Regulations framed under the Police Act. The Full Bench observed that the Police Act and the Rules made there under and/or statutory orders passed u/s 2 of the Police Act constitute a self contained Code relating to police service in the State, which is part of the civil services of the State. The Full Bench after noticing that the 2008 Rules do not contain any provision for setting up of Boards for effecting transfers observed that the notification dated 12th March, 2008 issued by the State Government constituting the four Boards cannot be said to be issued in exercise of the powers u/s 2 of the Police Act, but was issued to give effect to the directions issued by the Supreme Court under Article 142 of the Constitution in Prakash Singh (supra) and shall be binding till such time as the State enacts legislation for constituting the Boards.

5. The Full Bench thereafter examined Regulations 520 to 525 contained in Chapter XXXIV of the U.P. Police Regulations dealing with transfers and observed:

These Regulations are an exercise in subordinate legislation. It is no doubt true that the Hon'ble Supreme Court in Prakash Singh (supra) had directed the constitution of the Police Establishment Boards as also directed that the Board is to decide all transfers below the rank of Deputy Superintendent of Police. The directions have not held that the legislations in force in the matter of transfer are illegal. The directions to an extent supplement the law in force. The said directions, therefore, have to be read along with Regulations in the context that if the authorities under the Regulations in exercise of the power have at the local level proposed the transfers in terms of the policy, that has to be decided by the Police Establishment Board before the transfers are given effect to.

The question then is, what is the meaning of the expression "decide". We open with a caveat. Judgments cannot be read as statutes and so interpreted. The judgment must speak for itself. The expression "decide" has to be considered in the context of direction No. 5, which is to establish the Police Establishment Boards where the Supreme Court has used the expression "decide"....

Thus, the expression is used in the context of a decision making process to settling questions. Thus, the Board itself need not determine every act of transfer, it could decide on the proposals before it. ...

The directions of the Supreme Court are to enable the State to enact legislation to achieve the desired objective as set out in the judgment of Prakash Singh (supra). Thus, the directions cannot be read literally, but will have to be

considered in their broader aspect, which would also be to consider the "existing law" and the ultimate exercise of control by the Board to effect the transfers. The expression "decide", therefore, will have to be read in that context.

We may only mention that once a direction is issued by the Supreme Court, in the absence of a legislation, those directions to that extent will be part of additional conditions of service, as that would be law, and any violation of law, would give right to a person in whose favour, the law has been enacted and who complains of breach thereof. To that extent, the observations by the learned Judge in Bhanu Pratap (*supra*) would not be correct. The direction for setting up of the Boards by itself does not mean that all transfers would be personally done by the Boards. If under the Regulations, there is specific transfer policy and the authorities have proposed the transfers, the Board will exercise its powers to decide on those transfers. The power, therefore, will have to be read in that context, meaning thereby, before effecting transfer it is the Board which must ultimately decide the transfers. Considering the number of police personnel in service, it is not possible to read the directions issued under Article 142 to have conferred the power on the Board alone, when there is an existing law in force or legislation has been enacted subsequently.

6. The Full Bench then examined whether the Board had been validly constituted and in this connection observed:

The next question, we have to answer is, what is the effect of the notification, which has constituted the four Boards. The only objection is to the constitution of one of the Boards, which is headed by the Inspector General of Police (Establishment) and not by the Director General of Police and which is empowered to consider the transfer of Head Constable and Constable. The learned Division Bench, considering the matter in Jagannath Prasad Gaur (*supra*), was of the opinion that the Board had not been constituted in terms of the directions in Prakash Singh (*supra*). It is true that the Chairman of the Board is not the Director General of Police, but the Inspector General of Police (Establishment). We have earlier quoted the sanctioned strength of the police personnel in the State of Uttar Pradesh. Insofar as the Constables are concerned, the State carried out an exercise of transfer of about 50,000 (Fifty Thousand) Constables under an "existing law". The transfers have been effected by the Board, as constituted. These transfers are regular transfers in terms of the Regulations under the Police Act. The Regulations themselves provide for regular transfer after completing a particular tenure at a station on the administrative instruction in force. In other words, in respect of such transfers, question of any application of mind, really does not arise. If any person has any grievance in respect of his individual case considering the hardship, if any, on account of transfer, then the redressal mechanism provided for, will continue to govern him. ...

The judgment in Prakash Singh (*supra*) was to ensure that in the matter of transfers and promotions etc., the officers and men would be considered based

on their merit and uninfluenced by any political decision, patronage or consideration. Merely, because one of the functionaries named by post in the directions of the Supreme Court, is not in the Board, per se would not make the entire action of transfers void or non est. The administrative instructions are an exercise of the executive power of the State under Article 162 of the Constitution of India, which power extends to matters with respect to which the Legislature of the State has power to make laws. The transfers will have to be done in terms of the Police Regulations in force. To that extent, Rule 26 of the Rules, 2008 will have to be so read with the expression "orders applicable generally to Government Servants serving in connection with the affairs of the State" which includes the Regulations. It is only in an area where conditions of service are not covered by the Act, Rules or Regulations, with the rules in the matter of conditions of service applicable to other Government Servants, would be applicable. As long as the Regulations are in force, they will continue to be applicable in the matters of transfer. The Regulations also provide for regular transfers, which are transfers not on account of administrative exigency or in public interest. Rule 26 cannot be read to mean that all existing rules and regulations in the matter of conditions of service including transfer are no longer in force. Rule 26 only contemplates a situation where there is a vacuum or no provision. ...

In our opinion, therefore, considering the fact that the Rule 26 of the Rules, 2008 makes applicable the rules pertaining to the Government servants, i.e. persons appointed to public services and posts in connection with the affairs of the State, and as Regulation 520 deals with the transfers of the police personnel, who are also a part of the public services of the State, therefore, insofar as the police are concerned, the Regulation pertaining to transfer would continue to apply to them. Therefore, though one of the Boards constituted is not strictly in terms of the directions issued by the Supreme Court in *Prakash Singh* (supra), nonetheless considering the exercise that has to be done and the provisions for transfer, as contained in the Police Regulations, there has been sufficient compliance. ...

In these circumstances, we are clearly of the opinion that, though we have found that the notification constituting the Board is not traceable to Section 2 of the Police Act, the same at the highest, amounts to an irregularity and not illegality and would not vitiate the transfers, if they have been done in terms of the Regulations and after the approval of the Board.

(emphasis supplied)

7. After the judgment was delivered by Full Bench, and transfer order had been affected, then bunch of writ petitions were filed again by the constables and Head Constables in the State of U.P. for quashing of the transfer orders dated 26.4.2010, and therein request was also made for quashing of Government Order dated 19.2.2010 as well as Clause-5 of the Transfer Policy dated 21.4.2010 issued by the Chief Secretary, U.P. Government, Lucknow. This Court in the

bunch of writ petitions, leading one being Civil Misc. Writ Petition No. 25016 of 2010, J.P. Gaur and Ors. v. State of U.P. and Ors., considered the matter at great length and thereafter held as follows:

It is in the light of the answers given by the Full Bench that the submissions advanced by learned Counsel for the parties in this petition have to be examined.

The first submission of learned Counsel for the Petitioner is that the Police Establishment Board has failed to take into consideration the Government Order dated 25th March, 1995 which had amended paragraph-5 of the Government Order dated 11th July, 1986 for transfer of Constables and Head Constables posted in home district or in districts adjoining the home district. It is his submission that the condition imposed in paragraph-5 of the Government Order dated 11th July, 1986 had been modified by the subsequent Government Order dated 25th March, 1995 to the extent that the Constables and Head Constables posted in police stations adjoining the home district shall be transferred and non consideration of this Government Order has vitiated the decision taken by the Police Establishment Board and, therefore, the transfer order deserves to be set aside.

Learned Standing Counsel on the other hand has placed before the Court the Government Order dated 28th October, 2009 and has contended that the policy of transfer of Constable/Head Constables is to be governed by the Government Order dated 11th July, 1986 alone without the amendment alleged to have been incorporated in March, 1995 in paragraph 5 of the Government Order dated 11th July, 1986.

It is seen that the Government Order dated 11th July, 1986 was issued regarding appointments and transfers of Constables, Head Constables, Sub-Inspectors and Inspectors of Police. Paragraph-5 of the said Government Order provides that Head Constables and Constables shall not be posted in their home district or in districts adjoining their home district. The Government Order dated 25th March, 1995, on which reliance has been placed by learned Counsel for the Petitioners, amends paragraph-5 of the Government Order dated 11th July, 1986 to the extent that the Constables and the Head Constables shall not be posted in their home district or in police stations adjoining their home district. The genuineness of the said Government Order dated 25th March, 1995 was doubted in the subsequent Government Order dated 28th October, 2009 and so an inquiry was set up. It was also noticed that a proposal for not posting the Head Constables/Constables in police stations adjoining the home district was submitted in 1992 but the State Government did not accept this proposal and this decision was intimated to the Inspector General of Police, Allahabad on 27th June, 1992. The Government Order dated 28th October, 2009 thereafter mentions that the Government Order dated 11th July, 1986 shall continue to operate. In such circumstances, when a decision had been taken for implementation of the Government Order dated 11th July, 1986 without the amendment said to have been made by the Government Order dated 25th March, 1995, it cannot be said

that the decision taken by the Police Establishment Board for transfer of the Constables/Head Constables on the basis of the Government Order dated 11th July, 1986 is bad in law. This apart, no factual foundation has been laid in the writ petition as to whether the Petitioners were posted in police stations adjoining the home districts or not. Thus, for this reason also, the contention of learned Counsel for the Petitioner cannot be accepted.

The second contention of the learned Counsel for the Petitioners is that the State Government has not constituted the State Security Commission despite the direction of the Supreme Court in *Prakash Singh* (supra) and the State Security Commission alone could have taken a decision to implement the Government Order dated 11th July, 1986.

This submission of the learned Counsel for the Petitioners cannot be accepted. The State Security Commission was required to be established for an entirely different purpose namely for ensuring that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of land and the Constitution of the country. The matters relating to transfers, postings, promotions and other service related matters of officers and of below the rank of Deputy Superintendent of Police are required to be dealt with by the Police Establishment Board as is clear from direction No. 5 contained in paragraph 31 of the judgment rendered by the Supreme Court in *Prakash Singh* (supra) which is as follows:

Police Establishment Board

(5). There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions/transfers/ disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

In the present case, we are concerned with the transfers and postings of the Head Constables and Constables for which the Police Establishment Board alone has to take a decision. Thus, the absence of State Security Commission does not vitiate the decision taken by the Police Establishment Board for transfer of the

Petitioners even if such a decision is based on the general transfer policy formulated by the State Government in the Government Order dated 11th July, 1986.

The third submission of the learned Counsel for the Petitioners is that the Police Establishment Board took the decision to transfer 1947 Constables and Head Constables from one district to another district without application of mind in a cryptic manner without assigning any reason. Elaborating his submission, learned Counsel for the Petitioners has submitted that the proposal submitted by the Director General of Police/Deputy Inspector General of Police has been blindly accepted by the Police Establishment Board without independent application of mind. In this connection, learned Counsel for the Petitioners has placed reliance upon the decisions of the Supreme Court in *Onkar Lal Bajaj Vs. Union of India (UOI)* and *Another etc. etc.*, and *Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another*,

A perusal of the decision taken by the Police Establishment Board shows that the service records and the proposal submitted by the Police Officers for transfer of the Constables/Head Constables were examined in the light of the Government Order dated 11th July, 1986 and thereafter the decision was taken.

As noticed hereinabove, the Full Bench had examined this issue and had observed that it was not necessary for the Police Establishment Board to determine every act of transfer and it will suffice if it decides on the proposals before it. The Full Bench emphasised that the direction for setting up of the Board by itself does not mean that all transfers will be personally done by the Board and if there is a specific transfer policy and the authorities propose the transfers, the Board will exercise its powers to decide on those transfers. The Full Bench further observed that considering the number of police personnel in service, the power will have to be read in that context meaning thereby, that before effecting transfer it is the Board which must ultimately decide the transfers and that it is not possible to read the directions issued by the Supreme Court under Article 142 in the case of *Prakash Singh (supra)* to have conferred the power on the Board alone when there is an existing law in force or legislation has been enacted subsequently.

The Government Order dated 11th July, 1986 has been issued u/s 2 of the Police Act. The Police Establishment Board was, therefore, required to examine whether the cases of police personnel referred in the proposal fell within the ambit of the Government Order dated 11th July, 1986 and this is what it had examined. The decision taken by the Police Establishment Board shows that the proposal with the service record were placed before the Board and on examination it found that the names of the Constables/Head Constables included in the proposal were in accordance with the Government Order dated 11th July, 1986. The Police Establishment Board was not required to give separate decision in each case particularly, when it was considering the proposal for transfer of 1947 police personnel. It cannot, therefore, be urged that the Police Establishment Board had

not taken an independent decision merely because the proposal had been placed before it. This apart, it is not the case of the Petitioners that they are not covered by the Government Order dated 11th July, 1986.

Learned Counsel for the Petitioners has placed reliance on the decision of the Supreme Court in Onkar Lal Bajaj (supra) and Cyril Lasrado (supra).

In Onkar Lal Bajaj (supra) the Supreme Court set aside the decision taken by the Government for en masse cancellation of allotments of petrol pumps since it was unjustified and arbitrary and taken without application of mind to any of the relevant consideration. The Supreme Court further held that a decision has to be tested on the touchstone of justice, equity and fair play and if the decision has taken into consideration other matters, though on the face of it, the decision may look legitimate, if the reasons are not based on values but to achieve popular accolade, the decision cannot be allowed to operate. In the present, case the decision to transfer the Constables/ Head Constables has been taken on the basis of the Government Order dated 11th July, 1986 and it cannot be said that it has not taken into account relevant consideration.

In Cyril Lasrado (supra) the Supreme Court noticed that the basic issue raised by the Appellant was the unexplained delay in filing the writ petition but the High Court did not consider this aspect before disposing the writ petition. It is in this context that the Supreme Court observed that some reason should have been given.

These decisions, therefore, do not help the Petitioners.

It is, therefore, not possible to accept the third contention of the learned Counsel for the Petitioners.

The fourth submission of the learned Counsel for the Petitioners is that the Government Order dated 11th July, 1986 is discriminatory in nature for the reason that it seeks to exempt police personnel posted for the security of VI Ps" from the operation of the Government Order dated 11th July, 1986. It is not possible to accept this contention of the learned Counsel for the Petitioners. The police personnel posted for the security of VI Ps" perform entirely different duties than the other police personnel and form a class by themselves. The exemption of such police personnel cannot, therefore, be said to be discriminatory.

Reference in this connection can be made to the decision of the Supreme Court in U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another, in which it was observed:

It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(ii) such differentia must have a rational relation to the object sought to be achieved the statute or legislation in question.

The fifth submission of the learned Counsel for the Petitioner is that Clause 5 of the transfer policy dated 21st April, 2010 should be set aside as there is no rational basis for exempting the police department from this policy since the said policy has been made applicable to all the State Government officers/ employees.

Sri Piyush Shukla, learned Standing Counsel, however, submitted that the transfers of police personnel is governed by Regulations 520 to 525 of the Police Regulations and orders issued u/s 2 of the Police Act and, therefore, the Government had taken a decision to exempt the Police Department from the general transfer policy applicable to the State Government officers/employees. It is his submission that because of the nature of duties assigned to the police personnel who are more than three lacs and thirteen thousands from the level of Constables to the level of the Inspectors, it was necessary to have a separate transfer policy for them instead of a general transfer policy applicable to the employees of the State.

This submission of the learned Counsel for the Petitioners cannot also be accepted. The transfer of police personnel is governed by Regulations 520 to 525 and such orders issued u/s 2 of the Police Act. Looking to the strength of the personnel in the Police Department it cannot be said that the decision to exempt the Police Department from the operation of the transfer policy dated 21st April, 2010 is discriminatory in nature.

Thus, as none of the contentions advanced by the learned Counsel for the Petitioners have any force, the petition is liable to be dismissed.

Learned Standing Counsel has also placed before the Court decisions of the Supreme Court dealing with transfer and has contended that unless it is established that the transfer order has been passed for mala fide reasons or in violation of the statutory provision or by an authority not competent to pass the order, the Courts should desist from interfering with the transfer orders.

In Gobardhan Lal (supra), the Supreme Court examined this issue and observed as follows:

It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential

condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

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 situation concerned. This is for the reasons 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 fides 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.

(emphasis supplied)

These principles have also been pointed out by the Supreme Court in *G. Venkata Ratnam* (supra), *Somesh Tiwari* (supra) and *Airports Authority of India* (supra).

In the absence of allegations of mala fide and as the transfer order has been issued on the basis of the decision taken by the Police Establishment Board which was required to take a decision pursuant to the direction issued by the Supreme Court in *Prakash Singh* (supra) and such decision has been taken for implementation of the Government Order dated 11th July, 1986, it will not be appropriate to interfere with the transfer in view of the aforesaid decisions of the Supreme Court.

Thus, for all the reasons stated above, the writ petition is dismissed. Interim order stands discharged.

8. After the said decision was taken on 14.9.2010, it appears that Special Appeals had been preferred, but therein no interim orders had been passed, and

further it has also been informed that against the Full Bench decision of this Court Special Leave to Appeal had been filed in the Hon"ble Supreme Court, but therein also no interim order had been passed, as such net effect of the same was that the judgment rendered by this Court in the case of Jagannath Prasad Gaur and others decided on 14.9.2010 still holds the field of transfer.

9. On the parameters of the judgments noted and quoted above and the view of this Court holding the filed of transfer, the arguments advanced by Sri Vijay Gautam, Advocate and Sri Ashok Khare, Senior Advocate are being adverted to.

10. Sri Vijay Gautam, Advocate, has contended that the Government Orders dated 11.7.1986 and 19.2.2010 issued by Respondent No. 2, specially Clause-5 and further Clause 5 of the Transfer Policy dated 21.4.2010 is arbitrary and unreasonable, and further Clause 2(1) of the impugned order is liable to be quashed.

11. Sri Ashok Khare, Senior Advocate, has contended that in the present case power of transfer has been arbitrarily exercised, in such a situation and in this background, transfer orders are liable to be interfered with.

12. Countering the said submissions, learned standing counsel, on the other hand, has contended that the authority, who has passed the order of transfer, has got full competence to pass the order of transfer; there is no violation of statutory Rules or Regulations and the Government Orders, which hold the filed of transfer, have been issued by competent authority in exercise of statutory powers, as such no interference is liable to be made.

13. On the parameters of the judgments of this Court as well as Apex Court in the matter of transfer, specially in the matter of transfer of members of disciplined force, as far as the competence of authority who has exercised the power of transfer, qua the same no dispute has been raised, and this much has been accepted that the transfer order has been passed by competent authority after adhering to the provisions. Petitioners have miserably failed to point out that there is violation of any statutory Rules or Regulations, rather record in question reflects that proposal had been prepared and thereafter the same had been approved by the Police Establishment Board constituted in substantial consonance and spirit of the directives issued by Hon"ble Apex Court, and thereafter transfer orders have been passed. Once competent authority has passed the orders of transfer; there is no violation of any statutory Rules or Regulations, large scale transfers have been affected in administrative exigency, inasmuch as policy decision has been taken not to retain such incumbents posted in home district or adjoining home district or in police stations adjoining home district. It is clearly reflected that the proceedings undertaken for such transfers are neither selective nor punitive, rather for the welfare of the members of police force such a decision has been taken, as such on this score, transfer orders cannot be faulted.

14. Challenge has also been made qua the Government Order dated 11.7.1986

and 19.2.2010. Said challenge is not at all acceptable, for the simple reason that the said Government Order had been issued u/s 2 of the Police Act; and any Government Order can be challenged on the ground that such Government Order has been passed by an authority who lacked competence or same violates any constitutional or statutory provisions. In the present case, Petitioners have miserably failed to point out any of the aforesaid two contingencies being in existence, in such a situation and in this background to say that Government Order dated 11.7.1986 and 19.2.2010 are liable to be quashed, cannot be accepted.

15. Challenge has also been made to Clause 5 of the Transfer Policy dated 21.4.2010. Said challenge has already been dealt with by this Court while deciding writ petition No. 25016 of 2010 J.P. Gaur and Ors. v. State of U.P. and Ors., decided on 14.9.2010. Challenge has also been made on the ground that the Government Order proceeds to exempt Head constables and constables, who are engaged in V.I.P. Duties, and is thus discriminatory. Said aspect of the matter has also been considered in the aforesaid judgment dated 14.9.2010, and this Court re-affirms the said view so taken.

16. Transfer and posting is within the domain of the executive authority, who is the best judge to see as to where an incumbent should be posted and where his/her services can be best utilized. In the present case once uniform policy has been formulated and in the said direction uniform decision has been taken, then the Petitioners, who are members of disciplined force, cannot have any grievance on account of passing of such transfer orders.

17. Law on the subject is clear. In the case of Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors. 1995 (71) FLR 1011 (SC), the Hon''ble Apex Court held as under:

A Government servant holding a transferable post has no vested right to remain posted at one place or the other he is liable to be transferred from one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. 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. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.

18. In the case of State of U.P. and Others Vs. Gobardhan Lal, , Hon''ble Apex Court has held as under:

7. it is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential

condition of service in the absence of any specific indication to the contra in the law governing or conditions of services. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order or transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at the best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless as noticed supra shown to be vitiated by mala fide or is made in violation of any statutory provisions.

8. 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 requirement 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 fides 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.

9. The very questions involved, as found noticed by the High Court in these cases being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspapers reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring and effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary

proceedings on certain well-settled and recognised grounds or reasons, when property approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously Courts endeavour to safeguard the rights of parties.

19. Hon''ble Apex Court in case of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , has taken the view that transfer order should not be interfered unless same is in violation of statutory provisions or order passed is mala fide. Relevant extract is being quoted below:

The High Court while exercising jurisdiction under Article 226 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident but a condition of service. Necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others,

20. Hon''ble Apex Court, in the case of S.C. Saxena v. Union of India and Ors. 2006 (9) SCC 583, has held as follows:

In the first place, a Government Servant cannot disobey a transfer order by not reporting at the place of posting and then go to Court to ventilate his grievances. It is his duty first to report for work, where he is transferred and make representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

21. The caution given by Hon''ble Apex Court qua transfer matters of members of Force has been given in the case of Major General J.K. Bansal Vs. Union of India (UOI) and Others, in following terms:

It will be noticed that these decisions have been rendered in case of civilian

employees or those who are working in Public Sector Undertakings. The scope of interference by Courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed force should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless and exceptionally strong case is made out no interference should be made

22. Hon'ble Apex Court in the case of State of Haryana v. Kashmir Singh Civil Appeal No. 8690-8701 of 2010, decided on 6.10.2010 has cautioned in matter of transfer of police personnel from one place to another, that same is purely administrative matter, and High Courts should be loath to interfere with the same, and the same should be left to the authorities concerned.

23. There may be cases wherein individual problems may be there and violation of Transfer Policy may be alleged, such individual grievances can be redressed by the authority concerned after the transferee joins the place assigned to him/ her. In case such an incumbent after joining the at the transferred prefers his/her claim ventilating grievances being faced, then in that event the authority concerned would be free to take decision, within a reasonable period, preferably within three months thereafter.

24. Once Petitioners hold transferable posts and there is no violation of any Rules and Regulations, then there is hardly any scope of interference with the impugned orders of transfer.

25. Consequently, present writ petitions are being dismissed with liberty accorded.