
(2014) 03 AHC CK 0212
In the Allahabad High Court
Case No : Special Appeal No. 164 of 2014

Virendra Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 5 ADJ 330 : (2014) 4 ALJ 46 : (2014) 104 ALR 574 : (2015) 1 AWC 1086 : (2014) 3 ESC 1833 : (2014) 142 FLR 356 : (2014) 2 UPLBEC 1533

Hon'ble Judges : Sunil Ambwani, J; Satish Chandra, J

Bench : Division Bench

Advocate : Mohammad Umar Khan, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

Sunil Ambwani and Dr. Satish Chandra, JJ.—We have heard Shri Mohammad Kumar Khan, learned Counsel for the petitioner-appellants. Learned Standing Counsel appears for the State respondents. All the petitioners were recruited and are serving as constables in civil police. They are at present posted in police department at District Moradabad. They joined together and filed Writ Petition No. 56 of 2014 with a prayer for issuing writ, order or direction in the nature of mandamus directing the respondents to decide their representations dated 11.11.2013 on the basis of the Government Order dated 20.3.2012 for transferring them to their home district or to any district, which is near to their home district for looking after their families and children. All of them relied upon a Government Order dated 20.3.2012 issued by the Secretary, Home, Government of U.P. addressed to the Director General of Police, U.P., Lucknow clarifying that under the present arrangement of transfer of constables and head constables, considering their transfers to the places, which are far away from their home district and the practical difficulties faced by them, it was decided that there shall be no restriction on the transfer of constable and head constables to the neighboring district of their home district.

2. The petitioner has annexed a copy of the Government Order No. 797/6-

Po-1-12-81 dated 20th March, 2012 of which the second paragraph reads as follows:

3. The Inspector General of Police (Establishment), U.P. communicated the decision taken by the State Government vide the aforesaid Government, Order to all the Inspector Generals/Deputy Inspector Generals on the same day on 20.3.2012 in following terms:

4. Learned Single Judge dismissed the writ petition on the ground that there may be no bar in posting of constables to their home district, but that does not give to the petitioners a right of posting at their home district. He further held that the police force is a disciplined organization in which transfer is permissible on account of administrative exigency. The Court will not step into the shoes of the employer and direct the postings of police personnel at their home district. It is exclusively in the domain of the authorities and as such no relief can be granted to the petitioners.

5. Learned Counsel for the appellants has relied on some orders passed by the learned Single Judge of this Court by which the petitioners' representation was directed to be decided. He submits that same Hon'ble Judge has passed orders in some cases directing their representation to be decided, whereas in their case the writ petition has been dismissed.

6. Learned Counsel for the petitioners also relied upon an order passed by the Division Bench of this Court in Special Appeal Defective No. 1149 of 2013 in which the special appeal was disposed of with direction to decide the petitioner's representation for his transfer to the place adjoining to his home district.

7. We find that Government Order dated 20.3.2012 was incorrectly transcribed in its communication to all the Inspector General of Police and Deputy Inspector General of Police in the letter of communication to the order by the Inspector General of Police (Establishment), U.P. written on the same date. The Government Order dated 20.3.2012 had clarified that there will be no restriction of transfer of constables and head constables to the district, neighboring their home district, whereas the communication provided that there will be no restriction on their transfer from their home district to neighboring districts.

8. In order to avoid any doubts and the filing of writ petitions relying on an incorrect order, we direct the Inspector General of Police (Establishment), U.P. to issue a fresh communication in the light of the Government Order dated 20.3.2012, which may clarify the policy of the State Government that there shall be no restriction on transfer of the constables and head constables to the districts neighboring their home district. This, however, will not mean that the policy of the State Government of restriction of transfers of the constables and head constables to their home district to avoid influence and conflict of interest in discharge of their duties, may be violated.

9. The constables and head constables perform important duties in maintaining

law and order and in assisting the police officers in investigation of offences with punishment of less than three years. Their relationship, friendship and acquaintance with local people may cause impediment in fair and transparent discharge of their duties. In the circumstances, the policy of the State Government not to transfer constables and head constables to their home district appears to be justified. The State Government had simply clarified in the Government Order dated 20.3.2012 that it has no objection if such transfers are made to the districts neighboring their home district. The policy in its communication to all the Inspector Generals/Deputy Inspector Generals was not correctly transcribed, giving rise to expectations, which has resulted into many representations and orders passed in writ petition. The error must be rectified without any delay. The resultant transfers of constables and head constables made to home districts must be reversed.

10. We may further clarify that the Government Order dated 20.3.2012 does not give any right to the constables and head constables to seek their transfers to the district, neighboring their home districts. The decision only clarifies the previous policy, which appears to be wrongly interpreted, barring transfers to the districts, neighboring home districts. This clarification does not give any right to the constables or head constables to claim transfers. It does not give to them any enforceable right for which they may file writ petitions, after making representations. A Government servant may be transferred in the exigencies of service. He cannot seek a transfer on the clarification of the transfer policy. A writ petition will not be ordinarily maintainable for such relief.

11. We do not find any justification to interfere with the conclusion of learned Single Judge in dismissing the writ petition. The special appeal is disposed of with the clarification and directions given in the judgment.