
(2010) 07 AHC CK 0227

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Service Single) No. 4400 of 2010

Virendra Pratap Nayyar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 226
Uttar Pradesh Police Act, 1861 — Section 2

Citation : (2010) 07 AHC CK 0227

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Disposed Of

Judgement

Devi Prasad Singh, J.—Heard learned counsel for the petitioner and learned Standing counsel and perused the records.

2. Present petition has been preferred under Article 226 of the Constitution of India against the impugned order of transfer passed by the Inspector General of Police concerned transferring the petitioner from one place to another place. The submission of the learned counsel for the petitioner is that the order of transfer could not have been passed by the D.I.G keeping in view the mandate of Prakash Singh's case Prakash Singh v. Union of India. According to case of Prakash Singh, 2006 (8) SCC1 (supra) transfer could have been done only by the Police Establishment Board constituted by the State Government. Admittedly, the impugned order has not been passed by the Police Establishment Board.

3. Though learned Standing counsel tried to defend his cause stating that the order of transfer has been passed within the range by the Deputy Inspector General of Police under Para 520 of the U.P. Police Regulation, but a plain reading of the judgment of Prakash Singh v. Union of India (supra) shows that their Lordship of Hon'ble Supreme Court had not differentiated the transfer of police officer either within the range or outside the range.

4. A faint argument has been advanced by the learned Standing counsel that the case of Prakash Singh (supra) shall not effect the statutory provisions like U.P.

Police Regulation and authorities have got power to transfer the police officer from one place to other place.

5. Arguments advanced by the learned Standing counsel seems to be not correct. The case of Prakash Singh (supra) has not been decided by Hon''ble Supreme Court by reviewing an administrative order. Hon''ble Supreme Court had issued direction in the case of Prakash Singh (supra) in pursuance to power conferred by Article 142 of the Constitution of India in public interest. The Police Regulation contains the compilation of Government order issued in pursuance to power conferred by the Police Act. Accordingly, in case the provision contained in the Police Regulation is contrary to judgment of Hon''ble Supreme Court then State Government have to amend the Police Regulation in appropriate manner in conformity with the judgment of Prakash Singh (supra).

6. Their Lordships of Hon''ble Supreme Court in catena of judgments .while interpreting the provision contained in Article 142 of the Constitution of India held that State or its instrumentalities have got no right to avoid the direction issued by the Hon''ble Supreme Court. Hon''ble Supreme Court further held that where executive failed to fill up the gap in legislation the judiciary have to step in. Direction issued by the Hon''ble Supreme Court under Article 142 of the Constitution of India is mend to do justice and it enlarges the power of Hon''ble Supreme Court for making an order to do complete justice between parties or in public interest vide Azhar Ali Khan V. Commr. Municipal Corpn. Of Delhi, (1984) 3 SCC 549; Vineet Narain v. Union of India, (1998) 1 SCC 226; Ramesh Kumariv. State (NOT of Delhi), (2006) 2 SCC 677; Kashinath G. Jalmi (Dr) v. The Speaker, (1993) 2 SCC 703; RajKumarv. Union of India, (2006) 1 SCC 737; Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584; Kalyan Chandra Sarkarv. Rajesh Ranjan, (2005) 3 SCC 284; R.K. Jain v. Union of India, (2003) 6 SCC 581 : (1993) 4 SCC 119.

7. Apart from above every judgment and order passed or issued by Hon''ble Supreme Court is binding on the State as well as subordinate Court, authorities and Tribunal in view of Article 141 of the Constitution of India. State or its instrumentalities lacks jurisdiction to defy the judgment of Hon''ble Supreme Court by interpreting the same in the way which suits to them. For any ambiguity it is always open to the State Government to approach Hon''ble Supreme Court for clarification. So far as Government or its instrumentalities, subordinate Courts, High Court and Tribunal are concerned they have to abide by the direction issued by the Hon''ble Supreme Court. Non compliance of judgment of Hon''ble Supreme Court shall amount to committing contempt of Hon''ble Supreme Court.

8. Accordingly, since U.P. Police Regulation contained the Government order issued in pursuance to power conferred by Section 2 of the Police Act it shall be appropriate for the State Government to make appropriate amendment in the U.P. Police Regulation to mould it in conformity with the judgment of Hon''ble Supreme Court in the case of Prakash Singh (supra).

9. In the Case of Prakash Singh (supra) with regard to constitution of Police Establishment Board their Lordship of Apex Court had issued the following direction; to reproduce:

"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 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 posting 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 promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State."

10. A plain reading of mandate of Hon^{ble} Supreme Court with regard to Police Establishment Board shows that the Board shall decide the transfers, posting, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Board shall comprise the Director General of Police and four other senior officer of the department. The decision of the Board may be interfered by the State Government only in exceptional cases after recording reasons.

11. In view of above, it is apparent that a decision should be taken by the Board with regard to transfer, posting, promotions and service related matters. It is not a body to approve the decision taken by the state Government.

12. A part from constitution of Police Establishment Board Hon^{ble} Supreme Court had also directed to constitute the Police Complaints authority. Relevant portion is reproduced as under:

"Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names

proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him.

These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority."

13. Hon^{ble} Supreme Court had directed to constitute Police Establishment Board and Police Complaints Authority so that police personnel may not work under the political pressure or interference and may deal with the crime independently, honestly and fairly.

14. In the present case, at the face of record the impugned order has been passed by the Inspector General of Police concerned and not by the Board. Accordingly, the impugned transfer order has been passed in utter disregard to judgment of Prakash Singh (supra) which is not sustainable.

15. In view of above, writ petition deserves to be allowed. A writ in the nature of cert/orariis issued quashing the impugned order dated 16.6.2010 as contained in Annexure1 to the writ petition to the extent it relates to petitioner with consequential benefits with liberty to pass afresh order.

16. In a Writ Petition No. 1525 of 2009 (SS) decided vide order dated 4.9.2009 a direction was issued to constitute Police Establishment Board in pursuance to judgment of Prakash Singh (supra) but it appears that the same has not been complied with. It is expected that State Government shall proceed in terms of earlier judgment forthwith to avoid any action by this Court on account of noncompliance of direction issued earlier.

17. It shall be open to the Police Establishment Board to reconsider the petitioner's case and pass a fresh order.

18. Learned Standing counsel shall communicate the order passed by this Court to Director General of Police as well as Chief Secretary Government of U. P. for compliance.