

Neutral Citation No. - 2024:AHC-LKO:14254
A.F.R.

Court No. - 24

Case :- WRIT - A No. - 265 of 2024

Petitioner:- Sunil Kumar Pandey PNR No. 062018210 And 2
Others

Respondent:- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home
Lko. And 3 Others

Counsel for Petitioner :- M.P. Raju

Counsel for Respondent:- C.S.C.

AND

Case :- WRIT - A No. - 268 of 2024

Petitioner :- H.C. Vinay Pal Singh Pno. No. 052411322 And
Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.
And 3 Others

Counsel for Petitioner :- Anupam Shukla, Jay Vardhan Shukla

Counsel for Respondent:- C.S.C.

Hon'ble Vinod Diwakar, J.

1. The facts of both the petitions are similar, and the prayers made thereof are also similar; therefore, both the petitions are being decided by this common judgment.

2. I have heard Shri M.P. Raju and Shri Anupam Shukla, learned counsel for the petitioners, learned Standing Counsel for the State-respondents in respective petitions, and perused the records.

3. The Writ-A No.265 of 2024 has been filed with a prayer to quash the impugned relieving order dated 14.11.2023 passed by the Deputy Commissioner of Police, Lucknow, as well as the transfer order dated 5.6.2023 passed by Deputy Inspector General of Police (Karmik), Lucknow. A further prayer has been made to direct the respondents to allow the petitioners to work on the present place of posting and pay their salary regularly every month.

4. Learned counsel for the petitioners in the aforesaid writ petition submits that the impugned order dated 14.11.2023 passed in pursuance of the transfer order dated 5.6.2023 is illegal and arbitrary. The relieving order dated 14.11.2023 has been passed in defiance of Rule 523 of the U.P. Police Regulations. The petitioners have also raised certain personal reasons for not complying with the impugned order dated 14.11.2023. He further submits that while issuing the transfer orders and thereafter relieving orders, no uniform policy has been adopted by the Department, and that is why the favoritism and non-application of mind are reflected in the impugned order. Learned counsel further states that Chapter XXXIV, Rule 523 of the U.P. Police Regulations mandates the issuance of a relieving order within 10 days after the passing of the transfer order.

5. Another Writ-A No.268 of 2024 has been filed with the prayer to quash the impugned transfer order dated 27.5.2023 as well as relieving orders dated 6.11.2023 and 15.12.2023. A further prayer has been made to direct the respondents to permit the petitioners to discharge their duties at the present place of posting till academic session 2023-24 (April 2024).

6. Learned counsel for the petitioners further submits that the impugned order dated 14.11.2023 passed in pursuance of the transfer order dated 5.6.2022 is illegal and arbitrary. The relieving order dated 14.11.2023 has been passed in defiance of Chapter XXXIV, Rule 523 of the U.P. Police Regulations. He further submits that while issuing the transfer orders, and therefore relieving orders, no uniform policy has been adopted by the Department, and that is why the favoritism and non-application of mind are reflected in the impugned order. Learned counsel further states that Rule 523 of the U.P. Police Regulations mandates issuing a relieving order within 10 days after passing the transfer order.

7. In both the writ petitions, the learned counsel for the parties has drawn the attention of this Court to the Rule 523 of the Chapter XXXIV of the U.P. Police Regulations. Rule 523 contained in Chapter XXXIV of the U.P. Police Regulations is outlined herein under:

"On receipt of an order of transfer of a subordinate officer to another district the Superintendent will arrange to relieve him to his duties within.

Officers transferred are entitled to joining time, but the Superintendent may not grant leave to an officer under order of transfer.

An inspector relieved on transfer from another district is entitled to sign a certificate of taking over charge from the date of arrival in the new district. If the officers to be relieved cannot be present at headquarters, the charge certificate should be signed for him by the Superintendent of Police, or, in his absence, by an Assistant Superintendent of Police or Deputy Superintendent of Police. The effect of this will be that an officiating officer will be considered to have been reverted, and permanent incumbent's joining time or leave or discharge, will be counted from the date on which the relieving officer takes over charge"

8. Learned counsel for the petitioners has also relied upon the office order dated 7.6.2023 being no.9/2023/262/General/47-Ka-4-2023-(1/3/96) issued by Chief Secretary, Government of Uttar Pradesh and letter dated January 14, 2022 issued by the Director General of Police, Uttar Pradesh in which the parameters to regulate the transfer of the police officers/Head Constables/Constables have been discussed.

9. To fortify their argument, both the learned counsels for the petitioners have relied upon the series of orders passed by the co-ordinate Benches of this Court, whereby the transfer order has been either struck down by this Court on the similar ground of non-compliance of Rule 523 or because of the reasons that the transfer orders have been issued in the mid academic session of the petitioners' children. The details and gist of the orders annexed with the instant petitions are outlines hereinafter for illustrative purpose;
(i) Sardaj Ali PNR No.012642278 v. State of U.P. through Principal

*Secretary, Department of Home and others*¹; (ii) *Head Constable Harendra Kumar Ram v. State of U.P. through Principal Secretary Home and another*²; (iii) *Head Constable Ravindra Kumar and 33 others v. State of U.P. through Principal Secretary Department Home and others*³; (iv) *Ainuddin PNR No. 912412830 v. State of U.P. through Principal Secretary Department Home and others*⁴; (v) *S.I. Surendra Kumar Dwivedi and 2 others v. State of U.P. through Principal Secretary Department Home, Lucknow*⁵; (vi) *Abhay Ram and another v. State of U.P. through Principal Secretary Department Home, Lucknow*⁶; (vii) *Head Constable Shubhash Chandra v. State of U.P. through Principal Secretary Department Home, Lucknow and others*⁷; (viii) *Anil Kumar and others v. State of U.P. through Principal Secretary Department Home, Lucknow and others*⁸; and (ix) *Ali Ahmad v. State of U.P. through Principal Secretary Department Home, Lucknow and others*⁹.

10. The above-stated writ petitions have been disposed of/decided mainly on the ground either for non-compliance with the transfer policy issued from time to time by the government or floating of various government orders issued in this regard. For example, in *Sardaj Ali PNR No.012642278 v. State of U.P. through Principal Secretary, Department of Home and others*¹, the co-ordinate Bench of this Court stayed the transfer order apparently for non-compliance of the prior approval of the Chief Minister in pursuance of the government order dated 16.8.2022; in *Head Constable Harendra Kumar Ram v. State of U.P. through Principal Secretary Home and another*², the transfer order has been kept in abeyance till academic session of the petitioner's son is over; in

¹ *Writ-A No.8152 of 2022*

² *Service Single No.3551 of 2021*

³ *Writ-A No.4097 of 2022*

⁴ *Service Single No.23631 of 2017*

⁵ *Service Single No.31879 of 2018*

⁶ *Service Single No.5403 of 2019*

⁷ *Service Single No.28779 of 2021*

⁸ *Service Single No.454 of 2021*

⁹ *Writ-A No.9469 of 2023*

² *Service Single No.3551 of 2021*

*Head Constable Ravindra Kumar and 33 others v. State of U.P. through Principal Secretary Department Home and others*³, the liberty was granted to 34 petitioners to file a fresh representation to the Director General Police Establishment for reconsideration of the transfer which was done in the mid academic session of the children even though the petitioner's had completed their postings ranging from 10-15 years at a particular station. Likewise, the co-ordinate Bench of this Court disposed of the case *S.I. Surendra Kumar Dwivedi and 2 others v. State of U.P. through Principal Secretary Department Home, Lucknow*⁵ in the following terms:

"Heard learned counsel for parties.

All the writ petitions have been clubbed together as the issue involved in these petitions is the same as to whether the authority was justified in relieving the petitioners after two years of the transfer order having been passed. The transfer order in all cases were passed in the year 2014, in spite of it, on account of administrative exigencies, the need for adequate number of personnel at Lucknow, which is the State capital, they could not be relieved. Normally considering the lapse of time the appropriate course for the respondents was to re-consider the matter and pass a fresh order of transfer as has been held by this Court in the judgment dated 6.7.2016 passed in writ petition no.15148 (SS) of 2016 which has been followed by a co-ordinate bench in writ petition no.15961 (SS) of 2016, therefore only for this reason while granting liberty to the respondents to have a fresh look at the matter and pass a fresh order expeditiously say within a period of 2 weeks, the impugned orders are hereby quashed.

All the writ petitions stand disposed of in the aforesaid terms."

11. Similarly, the case of *Anil Kumar and others v. State of U.P. through Principal Secretary Department Home, Lucknow and others*⁸ was disposed of with the underlined observations:

"Be that as it may, since there is statutory prescription for relieving of a police officer within a period of ten days and this Court has condemned the delayed relieving of the police officers in various orders being passed by this Court in identical matter, therefore, the instant writ petition is disposed of finally quashing the impugned order dated 04.03.2020, so far as it relates to the petitioners, however, with liberty to the opposite parties to pass a fresh order of transfer, if exigency of service so requires, strictly in accordance with law and the transfer policy, particularly considering the aspect of mid session."

³ Writ-A No.4097 of 2022

⁵ Service Single No.31879 of 2018

⁸ Service Single No.454 of 2021

12. On perusal of the order passed by this court, it transpires that such non - non-compliance is frequent, and it seems the department has no concern to the orders passed by this Court. There seems to be no effect on the working of the department so far as the transfer of the police officers is concerned, and such non-compliance is frequent. The reasons for not giving adherence to the orders passed by this Court may be best known to the officers, but its apparently reflected that this is adversely affecting the working of the police force and impacting the State's interest.

13. The executive authority is bound by the norms, standards, and procedures laid down by it to regulate the police of the State. In this regard, **Mr. Justice Frank Furter** in **Vitaralli v. Seaton**¹⁰, enunciated the Rule as under:

“An executive agency must be rigorously held to the standards by which it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

14. The Supreme Court accepted the Rule as valid and applied in India in **A.S. Ahluwalia v. State of Punjab**¹¹ and in the subsequent decision given in **Sukhdev v. Bhagat Ram**¹². It may be noted that this Rule though supportable also as an emanation from Article 14, does not merely rest on that Article. It is an independent existence apart from Article 14. It is a rule of administrative law that has been judicially evolved as a check against the exercise of arbitrary power by the executive authority. It is indeed unthinkable that in a democracy governed by the rule of law, the executive government or any of its officers possesses arbitrary power over the interest of the individual. Every action of the executive government must be informed with reason and should be free from arbitrariness. That is

¹⁰ 9 US 535: Law ED (Second Series) 1012

¹¹ (1975) 3 SCC 503

¹² (1975) 1 SCC 421

the very essence of the rule of law and its bare minimum requirement¹³.

15. This Court in **Param Singh and others v. State of U.P. and others**¹⁴ has discussed the legal framework with regard to the transfer of the government servant. Transfer is a condition of service, and a government servant has no vested right to remain posted at the place of his/her choice. The court should not interfere with the transfer order, which is made in the public interest and for administrative reasons, unless an order of transfer is shown to be the outcome of a *malafide* exercise or stated to be in violation of statutory provisions prohibiting any such transfer. For clarity, para 18, 19, 26, 28 & 31 of the judgement are extracted herein under:

“18. Guided by the settled principles of law, referred above, we find that the appellants are members of a disciplined force, therefore, they are not expected to disobey the order of their transfer and if they have some personal problem or the transfer has been passed against the transfer policy, it is open to them to move a representation to the appropriate authority for redressal of their grievance. In case it is found that they have some personal problem, the authorities ought to consider their grievance and pass appropriate order and shall make an endeavour to address the same. In the cases of genuine problems the representations of the Government employees should not be rejected mechanically.

19. It is true that if a transfer order is passed in violation of administrative order/transfer policy, it does not confer a vested right to the Government employee to challenge it but at the same time, as observed by the Supreme Court in the abovementioned cases, while transferring the Government employee the authority concerned should keep in mind the transfer policy and the executive orders.

26. A policy/policy decision/policy matter is made by Government after considering all the points from different angles, while framing the policy the Government also takes into consideration the administrative efficiency and other incidental matters. Once the Government takes a policy decision, it is obligatory on its officials to execute its policy in the right earnest and to achieve the objects of the policy. The rule of the law casts a duty on the administrative functionaries to act within the framework of the law, be it law made by the legislature, subordinate legislation or executive orders issued under Article 73 and 162 of the Constitution. They are also obliged to follow the circulars/memos and instructions issued by the Government. In the matter of policy

¹³ *Ramana Dayaram Shetty v. International Airport Authority of India and others*, (1979) 3 SCC 489

¹⁴ (2018) SCC OnLine All. 5677

decision of the Government, it is trite that Courts, in exercise of their jurisdiction, will not transgress into the field of policy decision. Court's interference is called for only on limited grounds, when it suffers from unreasonableness, arbitrariness or it is beyond legislative power or is beyond constitutional limits or public policy or against statutory provision. If the Courts have treated the policy/policy decision/policy matter on such a high pedestal then Government's own employees/officials cannot be allowed to breach and ignore its order with impunity.

28. *In our view, the Government is bound by its policy. However, if for some reasons due to administrative exigency or public interest it becomes necessary to deviate from it then proper course is to record brief reasons at best on the file to justify the deviation from the policy. Earlier, the traditional view in England was that executive is not answerable where its action was attributed to administrative functions. Lord Denning MR. in **Breen v. Amalgamated Engineering Union (now Amalgamated Engineering and Foundry Workers Union)**¹⁵, observed thus:*

“The giving of reasons is one of the fundamentals of good administration.”

31. *In the light of above discussion, it is demonstrably clear that even if a transfer order is found to be in violation of executive instructions or orders, Courts ordinarily should not interfere instead the affected party may approach higher authorities in the department. But if a transfer order is passed in administrative exigency or public interest and is in violation of transfer policy of the Government, then the competent authority must record brief reasons in the file for deviation from transfer policy. It is not necessary to mention said reason in transfer order. The recording of reason shall check arbitrary exercise of power and will help the judicial process and by superior administrative heads if the order is challenged by affected person.”*

16. Government policy decisions are often formulated after extensive deliberation, taking into account various considerations such as public interest, administrative efficiency, and legal framework. Once a policy is formulated, it becomes imperative for government officials to adhere to and implement it diligently.

17. However, administrative discretion is not absolute and must be exercised within the confines of legal principles and constitutional constraints. The rule of law imposes limitations on the exercise of administrative discretion, ensuring that government actions are consistent with statutory provisions, constitutional

¹⁵ (1971) 1 All ER 1148

norms, and principles of fairness and reasonableness. Thus, while government officials enjoy a degree of autonomy in decision-making, they are bound by legal norms and are accountable for their actions.

18. There is another aspect of this case: this Court is flooded with similar nature of petitions every day, wherein transfer orders are challenged on the ground of contravention of Rule 523 of the Uttar Pradesh Police Regulations by the officers, and this is affecting the working of the police and undermining the morale of the police force.

19. In a State like Uttar Pradesh, which has the largest single police force in the country, covers an approximate area of 243.286 square kilometres and a population of over 20 crores approximately (as per Sensex 2011). The State has a force of approximately 3.10 lakh personnel spread over 75 districts and 33 armed battalions. The transfer and posting of police officers within the Government Department is crucially an administrative decision that significantly impacts law enforcement agencies' efficiency and effectiveness. These decisions are often subject to the discretion of the higher authorities, keeping in view the operational and administrative requirements, and the absence of a uniform and consistent approach in making such decisions may lead to various legal, administrative, and operational challenges.

20. The uniformity and consistency in the transfer and posting of police officers are essentially for promoting transparency, fairness, and accountability within the police force. When decisions are standardized, it helps prevent favoritism, nepotism and other arbitrary considerations that could compromise the integrity of force. Additionally, a uniform approach fosters a sense of trust and confidence among the rank and file, attributing to a more coercive and disciplined police force.

21. The inconsistency in the transfer and posting of police officers can have a detrimental effect on the administrative and operational capabilities of the police. Arbitrary transfers and non-compliance with rules, regulations and policies formed by the Government by the Officer-in-charge and responsible for making such transfers hinder effective community policing and diminish morale among officers.

22. This Court noticed that the provisions of U.P. Police Regulations have been regularly either ignored or violated to protect the interest of desired or chosen candidates. It is also noticed that over a period of time, in many cases, it has made a practice that the provisions of U.P. Police Regulations are not followed in many aspects; one of the potential reasons could be either the officers are not aware of the provisions of Police Regulations and government policies issued time to time or the officers have sometimes vested interest.

23. Administrative discretion is vital for effective governance; it must be exercised within the bounds of legal norms and constitutional principles. While judicial review serves as a crucial mechanism for upholding the rule of law and ensuring accountability in government actions. However, courts should exercise restraint and deference in reviewing government policies, recognizing the expertise and autonomy of the executive branch. Ultimately, striking a balance between administrative discretion and the rule of law is essential to maintain the integrity and legitimacy of government decision-making processes.

24. Courts are hesitant to interfere in matters of policy formulation unless there are compelling reasons to do so. Grounds for judicial intervention typically include instances where government actions are arbitrary, unreasonable, ultra vires, or contrary to public policy or its own circulars and regulations.

Courts may also intervene if government policies infringe upon fundamental rights or violate statutory provisions.

25. Therefore, in view of the foregoing discussions, the Director General of Police, U.P., Lucknow, is directed to examine the reasons for non-compliance with Rule 523 of U.P. Police Regulations and place a report before the Government to take immediate and effective steps to issue appropriate directions or circulars to the police officers responsible for issuing the transfer and relieving orders. The Director General of Police shall indicate in its report, the number of cases- district- wise, wherein the compliance of Rule 523 of U.P. Police Regulation has not been observed by the Officer-in-charge in letter and spirit in the last one year, and shall also propose potential punitive actions against the erring officers. The said exercise by the Director General of Police shall be concluded within 60 days from the date of the order and submit a report to the Government, accordingly, then after that the Government shall issue well-structured directions/regulations to the police officers in a time bound manner to ensure that Rule 523 of the U.P. Police Regulations is uniformly and consistently followed.

26. The Director General of Police shall also prepare a comprehensive list indicating the details of transfer orders passed by the Officer-in-charge in their respective jurisdiction in which no relieving order has been passed till date. The fate of such transfer orders, if any, shall be decided in accordance with Rule 523 of the U.P. Police Regulations, and if need be, a fresh transfer order be passed in accordance with the transfer policy and government orders issued from time to time in this regard.

27. Needless to say, if, for all practical and administrative reasons, Rule 523 of the U.P. Police Regulation cannot be implemented in letter and spirit, then the same shall be examined at the State level and needful be done accordingly. The consistently

and uniformly implementing a transfer policy by executives would enhance transparency, accountability, and responsibility within police force.

28. Reverting back to the prayer made in **(i) Writ-A No. 265 of 2024**, it is directed that the impugned relieving order dated 14.11.2023 shall remain stayed till 30.4.2024, and the impact of the impugned order shall be revived immediately thereafter. The department shall be at liberty to proceed further in conformity with the transfer order dated 5.6.2023. The petitioners are further directed to report to the new place of posting as delineated in the transfer order within a week from 31.4.2024; and also in **(ii) Writ-A No. 268 of 2024**, it is directed that the impugned relieving order dated 6.11.2023 and 15.12.2023 arising out of transfer order dated 27.5.2023 and 4.11.2023 shall also remain stayed till 30.4.2024, and the impact of the impugned order shall be revived immediately thereafter. The department shall be at liberty to proceed further in conformity with the transfer order dated 27.5.2023 and 4.11.2023. The petitioners are further directed to report to the new place of posting as delineated in the transfer orders within a week from 31.4.2024.

29. The Registrar (Compliance) is directed to send a copy of this order to the Director General of Police for necessary compliance and take note of the observations deliberated herein above. A copy of this order will also be sent to the Chief Secretary, UP, for effective supervision and compliance.

30. The present petitions stand disposed of in the aforesaid terms.

Order Date :- 16.1.2024

Shafique

Vinod Diwakar, J.