

C.W.P No. 10488 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 10488 of 2014

DATE OF DECISION: 01.08.2016

Constable Dharam Pal Singh

.....Petitioner

Versus

State of Punjab through Principal Secy. & Ors.

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. G.C. Rattan, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of order dated 2.4.2012 (Annexure P-1) qua to petitioner, vide which, he has been transferred to the District Police, Mansa contrary to the provisions of Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules, 1934) as well as in view of law laid down by the Division Bench of this Court in C.W.P. No. 66 of 2006 titled as **Lady Constable Vinod Kumari and others Vs. State of Haryana and others**, decided on 4.4.2006.

Briefly, the facts of the case are that the petitioner was working as Contable in Punjab Police. He was transferred from the office of Senior Superintendent of Police, SAS Nagar, Mohali to District Police, Mansa vide impugned order dated 2.4.2012.

The aforesaid order has been challenged on the ground that District Police Mansa was out of range of his previous place of posting and is contrary to the provisions of Rule 12.26 of the Rules, 1934 as well as the judgment passed in **Vinod Kumari's case (supra)**.

Notice of motion was issued on 27.5.2014 and in response thereto reply has been filed and the same is on record.

Learned counsel for respondent-State opposes the averments made in the petition on the ground that the petitioner has no right to remain posted at a particular District of his choice and the competent authority has transferred him on administrative grounds from SAS Nagar, Mohali to District Mansa. The controversy in the present case is squarely covered by the decision of Hon'ble the Apex Court in the case of **State of Haryana and others Vs. Kashmir Singh and another**, Civil Appeal Nos. 8690-8701 of 2010 decided on 6.10.2010, wherein, it was held that Court should not interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal rights of the citizen.

Heard the arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also gone through the impugned order as well as other documents available on the file.

Admittedly, the petitioner was working as Constable in Punjab Police and was transferred from the office of Senior Superintendent of Police, SAS Nagar, Mohali to District Police Mansa vide order dated 2.4.2012. Said order has been challenged only on the ground of jurisdiction and by relying upon the judgment of Division Bench in **Vinod Kumari's case (supra)**. As per written statement filed by the respondents, seniority of

the petitioner would not be disturbed by virtue of his transfer from SAS Nagar, Mohali to District Mansa. The impugned order was passed after enactment of Punjab Police Act, 2007 (hereinafter referred to as 'the Act, 2007'), vide which, seniority of District Police Cadres is maintained at Central Police Office level i.e. the office of Director General of Police, Punjab under Section 4 (b) of the Act 2007, which is reproduced as under:-

“Section 4. Organization and Composition of Police Service:-

Subject to the provisions of this Act:-

(a)

a. the officers of Subordinate ranks of district police, armed police, intelligence and technical and support services shall form separate cadres. Seniority of each cadre shall be maintained at the State level. Transfer of a member of one cadre to another cadre shall not be allowed.

Section 3 (1) and (2) of the Act, 2007 is also relevant and the same is reproduced as under:-

“3. (1) There shall be one Police Service in the State.

(2) Notwithstanding anything contained in any other law or any of the provisions of this Act, the members of the Police Service shall be liable for posting anywhere in the State and outside the State, as may be ordered by the competent authority.”

In the present case, the petitioner belongs to District Police Cadre and as per the aforesaid provisions, he can be transferred in any District Police as seniority of District Police Cadre is maintained at Central

level. Same controversy was involved in C.W.P. No. 13670 of 2012 titled as **PHC Shashi Kumar Vs. State of Punjab**, decided on 31.7.2012, wherein, it was held as under:-

“It is now well settled that transfer guidelines/policy would not vest with an employee an enforceable right. Accordingly, challenge to the order of transfer merely on account of deviation of any stipulation in the transfer/policy/guidelines cannot vest with an employee a cause of action to invoke the extraordinary jurisdiction to impugn such transfer order. Be that as it may, the Hon'ble Apex Court in **Union of India Vs. S.L. Abbas** 1995 (4) SCT-455 had observed that it would be obligatory for the Competent Authority to keep in mind the transfer policy formulated by the State while issuing transfer orders.

Accordingly, the challenge to the impugned order to transfer in terms of filing the present writ petition is rejected. However, liberty is granted to the petitioner to approach the authority concerned and to raise all objections as regards the transfer order being in violation of the transfer policy and it shall be obligatory for such authority to consider the claim of the petitioner in the light of such transfer policy as per the mandate of the Hon'ble Apex court in S.L. Abbas's case (supra).

The issue of transfer of Police officials from one place to another was subject matter of challenge before Hon'ble the Apex Court in Civil Appeal Nos. 8690-8701 of 2010, decided on 6.10.2010, wherein, it was held as under:-

“Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the concerned State authorities which are in the best position to assess the necessities of the administrative requirements of the situation. The concerned administrative authorities may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint vide *Tata Cellular Vs. Union of India* -AIR 1996 SC 11”.

From the rules as well as the judgments as mentioned above, it is apparent that in terms of Section 3 (2) of the Act, 2007, the members of Police Service can be posted anywhere in the State and outside the State as may be ordered by the competent authority. The judgment relied upon by learned counsel for the petitioner is not applicable in the present case as it relates to State of Haryana. Moreover, after enactment of the Act 2007, cadre of the petitioner is not District Wise. There are four cadres i.e. (i) District Police Cadre - consisting of all Districts and GRP as one cadre, ii) Armed Battalions, iii) Intelligence Wing and iv) Technical and Support Service. The seniority of District Police Cadre is also maintained at Central Police Level and in terms of Section 4 (b) of the Act, 2007, seniority of the

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petitioner has not been effected in any manner by way of present transfer.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is hereby dismissed.

August 01, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes