

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17440 of 2013

Date of decision:2.9.2016

ASI Megh Pal

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. ND Achint, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

The service profile of the petitioner ASI Megh Pal is no longer required to be revisited in any detail since the Division Bench of this Court in an elaborate order in writ petition filed by the petitioner earlier being CWP No.18904 of 2005 together with 10 connected writ petitions have delineated not only the facts but the issues relating to seniority. Briefly put, the facts which are not in dispute are that the petitioner was enrolled as a Constable in 1980 in Police District Ambala. He was confirmed as a Constable in his own district in February, 1987. He sought a transfer to Government Railway Police (GRP) on mutual transfer basis with another Constable. He continued to serve in GRP from February 17, 1987 to November 19, 2001 when again on mutual basis he was transferred back to Ambala vice Head Constable Hari Kishan to GRP by consent of both the policemen. However, the petitioner was promoted as Head Constable in GRP on December 14, 1988 and was re-transferred to Police District Ambala on mutual request and confirmed as Head Constable in Police District Ambala, his parent unit. Again, the petitioner was promoted as ASI

w.e.f. December 23, 2002 in Police District Ambala. Petitioner Megh Pal & other petitioners had approached this Court against their transfers outside their cadre by way of CWP No.18904 of 2005, Megh Pal v. State of Haryana supra and connected petitions. The Division Bench accepted the view that the transfers beyond the police district where one was enrolled cannot be made without consent. The conclusion was drawn on the basis of the rule position that prescribed that each police district constitutes a separate cadre up to the rank of Head Constable. Beyond that it is range-wise and still beyond, seniority is framed state-wise, with which we are not presently concerned. The only exception to the rule was a transfer by consent to another cadre. The legal position has been somewhat altered with the pronouncement of the Supreme Court judgment in State of Haryana & ors. v. Kashmir Singh & ors., (2010) 13 SCC 306 where the Supreme Court has held that the Haryana Government is empowered to transfer Constables and Head Constables to other districts for maintenance of law and order and for administrative purposes but the seniority has to be maintained in their parent cadre and cannot be disturbed. However, it would not be a correct position that in all circumstances, Government is precluded from transferring a police official to another district with or without consent in administrative exigencies. In *Kashmir Singh* the Supreme Court held while disagreeing with the view of the Division Bench of our High Court expressed in CWP Nos. 7695, 7607, 7665, 7837, 8636, 8704, 8814, 9117, 6941, 8018 and 8310 of 2006 decided on 31.5.2006 observing as follows:-

“16. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it

will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Justice Holmes of the US Supreme Court pointed out, there must be some free-play of the joints provided to the executive authorities.”

In the present petition, rather vague prayers have been made.

The substantial ones which are (i) & (ii) read as follows:-

- “i) To issue a writ of mandamus directing the respondent to consider his representation Annexure P-1 dated 02.11.2010 addressed to respondent No.2 and assign to the petitioner his seniority under Rule 13.8 Punjab Police Rules by taking into consideration the seniority of the petitioner assigned at no.20/176.
- ii) To issue appropriate direction to the petitioner to consider representation Annexure P-1, 02.11.2010, in the interest of justice.”

The law having been declared in the case of the petitioner himself by the Division Bench in CWP No.18904 of 2005, it will be too much to expect the respondents to pay attention to the representation dated November 2, 2010 [Annex P-1]. It is unfortunate that in the petition, there was no mention of CWP No.18904 of 2005 or the office orders dated December 3, 2002 and November 21, 2005. Even when the petition was brought after 8 years of the last mentioned order, which is sought to be questioned in this petition there is no direct and specific prayer for quashing those orders as would be noticed in the two substantial prayers reproduced above. These documents were placed with the aid of C.M. No.16027 of

2013 dated November 11, 2013. Had these documents been placed on record in the beginning, it is anyone's guess what the fate of the case at the motion stage may have been including on delay and laches since the hidden claim was essentially for seniority for further promotion to higher ranks.

I would, in such circumstances, apart from withholding of relevant facts at the initial stage of the petition find the petition wholly devoid of merit and largely covered by the previous decision in the petitioner's own case and also for the petitioner not having been candid to the Court by disclosing the full facts when the petition was filed. It is not enough to place the orders of the Division Bench and the documents in the application without dealing with its impact in the main petition itself. Neither has the petition been amended to accommodate challenge to an adverse order. I would therefore, dismiss this petition with ₹ 10,000/- as costs, to be paid by the petitioner to the Punjab State Legal Services Authority. If not paid within 2 months from today the amount will be recoverable as arrears of land revenue by the authority.

(RAJIV NARAIN RAINA)
JUDGE

2.09.2016

monika

Whether speaking/reasoned *Yes*

Whether reportable *No*