

CWP No.21550 of 2019

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.21550 of 2019

Date of Decision: 13.02.2023

**MOHD.ILLYAS
Vs**

.....Petitioner

STATE OF HARYANA & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has filed this petition for the issuance of a writ in the nature of Certiorari for quashing the impugned order dated 03.04.2018 passed by the respondent No.3 dismissing the representation of the petitioner regarding fixation and keeping his seniority in Police Commissionerate, Faridabad.

The petitioner was appointed as Constable in District Gurugram on 02.03.1984. Thereafter, he was transferred to District Faridabad on 21.10.1987. The petitioner was brought on promotion list B-1 w.e.f. 03.11.1992 by the order of Deputy Inspector General of Police in District Gurugram range of which District Faridabad was a part. Thereafter, the petitioner was deputed to undergo Lower School Course in terms of Rule 13.7

and his name was brought on promotion list C-1 w.e.f. 14.07.1993 from District Faridabad. The petitioner is a confirmed employee in District Faridabad and was promoted to the rank of officiating Head Constable w.e.f. 14.12.1999. The petitioner was deputed to undergo Intermediate School Course from District Faridabad and, thereafter, he was brought on promotion list 'D' and was promoted as Officiating Assistant Sub Inspector w.e.f. 25.10.2006. The petitioner had successfully cleared his Intermediate School Course from 17.04.2006 to 18.08.2006.

District Palwal was carved out from District Faridabad on 03.01.2006. At that time, the petitioner was posted in District Faridabad, which is evident from the pleadings regarding posting, in para Nos. 8 and 9 of the writ petition, to which reply of the respondent department is in affirmative in corresponding paras of the written statement. Thereafter, the petitioner was transferred from District Faridabad to District Palwal vide order dated 13.11.2007. The Commissionerate at Faridabad was made on 01.08.2009.

The grievance of the petitioner is that his seniority for further promotion has to be maintained in his parent department at Faridabad as he had lien in Faridabad for all intents and purposes and the said lien cannot be changed to District Palwal even with the consent of the petitioner on the strength of

Niranjan Singh vs. State of Punjab, 1999 (3) SLR 749 FB. The lien of the petitioner was never terminated while transferring him from Faridabad to Palwal. The transfer of the petitioner from Faridabad to Palwal is based on the unilateral act of transfer by the Commissioner of Police, Faridabad based on the recommendation of a Committee. Now District Palwal falls under Rewari range and the cadre of the petitioner is going to be changed, thereby affecting his seniority position, as his juniors in Faridabad Commissionerate are at the verge of further promotion.

The petitioner filed a representation dated 15.01.2018, when his juniors were considered and promoted to the post of Sub Inspector in Faridabad Commissionerate. The petitioner has tabulated the necessary information in para Nos. 5 and 9 of the representation to which there is no specific denial in the impugned order. The impugned order has been passed on 03.04.2018, primarily on the ground that as per the Lien Fixation Policy dated 07.1.2010, para No.6 (3), all NGOs (ASIs/SIs), who were posted in the jurisdiction of District Faridabad on 01.08.2009 will have their lien with the Police Commissionerate Faridabad and all those NGOs, who were posted in districts of Rewari, Mewat at Nuh, Mahendergarh at Narnaul and Palwal on

01.08.2009 will have their lien with the new police Range i.e. South Range Rewari.

As per the written statement filed by the State, a specific stand has been taken that the petitioner was posted in District Palwal on 01.08.2009 as Assistant Sub Inspector which after 03.01.2006 falls in Faridabad (Rural) and not in district Faridabad. The place of posting is the principle for fixation of lien of police personnel at Police Commissionerate of Gurugram, Faridabad and South Range Rewari as per policy dated 07.10.2010.

The stand taken in para No.11 of the written statement if tested on the basis of pleadings made in para Nos. 8 and 9 of the writ petition and corresponding reply filed by the State to para Nos. 8 and 9 would make the stand of the State totally different.

Admittedly, the pleadings in para Nos. 8 and 9 of the writ petition are to the effect that the petitioner was transferred from District Faridabad to District Palwal on 13.11.2007 and the District Palwal was carved out from District Faridabad on 03.01.2006. In para No.8 of the written statement, the respondents have admitted that the district Palwal was carved out from district Faridabad on 03.01.2006 and the petitioner was posted at Faridabad.

In para No.9 of the written statement, no specific

denial has been made. The respondent department has not made any reference to the place of posting of the petitioner whether he was posted in District Faridabad (Rural) at the time of his transfer to District Palwal. Rather the reply in the context of para No.8 is to the effect that the petitioner was posted at Faridabad.

Even otherwise, the petitioner was confirmed in District Faridabad. He was sent to Lower School Course and Intermediate School Course from Faridabad and successfully brought on List C1 and D1, when he was promoted to the post of officiating Sub Inspector w.e.f. 25.10.2006. The lien of the petitioner has been changed from Faridabad Commissionerate to District Palwal, which falls under South Range without any consent of the petitioner. The unilateral act of transfer by the respondent department from one cadre to another has affected the seniority position of the petitioner and further right to be considered for further promotion in Faridabad Commissionerate. The petitioner had already worked in District Faridabad for more than 20 years and had achieved certain positions in the seniority list at Faridabad by virtue of his confirmation and total length of service, therefore, his right cannot be obliterated by means of purely unilateral act of transfer based on some recommendation of the committee. The impugned order is silent

with regard to all these attending facts and circumstances of the cases.

The petitioner has also assailed para No.6(iii) of the Lien Fixation Policy dated 07.10.2010 on the ground that the petitioner was a confirmed employee in Faridabad Commissionerate and his lien cannot be changed without his consent as the impugned act would obliterate his rights of promotion in Faridabad Commissionerate as he had already attained certain positions in terms of seniority and confirmation based on length of service in Faridabad Commissiionerate.

In view of above, the impugned order is found to be wanting on legal parameters as the same does not answer the stand of the petitioner except to say that the petitioner was transferred to District Palwal on a given date, therefore, his lien has to be considered in South Range Rewari.

In my considered opinion, the stand of the State is not explanatory inasmuch as that the legal position in terms of Rule and interpretation of lien given by the Full Bench of this Court in **Niranjan Singh's case (supra)** have not been explained.

In view of above, the impugned order is set aside. However, liberty is given to the respondent-competent authority to pass a fresh order after duly explaining the lien policy. At this stage, without meaning anything on the lien policy, I deem it

appropriate to dispose of this writ petition by directing the competent authority to revisit the issue strictly in the light of legal parameters as pointed out in Niranjan Singh's case (supra) as well as the ratio of State of Haryana and others vs. Kashmir Singh and another 2010 (13) SCC 306.

Needless to say that the fresh order shall be passed by the competent authority without being influenced by the rigour of para No.6 (iii) of the lien policy to which a challenge has been made in the present writ petition.

The case of the petitioner be considered on legal parameters and the respondent authority may specify in the order as to whether in a given case para No. 6 (iii) of the lien policy can be resorted to or not.

Let the needful be done within a period of three months from the date of receipt of certified copy of this order.

Petition stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

13.02.2023

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whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no