

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5147 of 2024

1. Mrityunjay Kumar Singh Son of Ramadhar Singh resident of Jayanti Complex, Montessori School Lane, Boring Road, P.S. - S .K. Puri, District- Patna.
2. Raju Kumar Dubey @ Raju Dubey son of Bindhyachal Dubey, resident of village- Jaijor, P.S. Andar, District- Siwan.
3. Munna Kumar son of Late Jogi Paswan, resident of village- Dumri, P.S. Saraiya, District- Muzaffarpur.
4. Niraj Kumar Singh son of Parama Singh, resident of village- Takipur, P.S. Maharajganj, District- Siwan.
5. Vinod Kumar Yadav son of Gautam Yadav, resident of village- Bhatwaliya, P.S. - Kopa, District- Saran.
6. Mohan Kumar son of Vidyapati Singh, resident of Flat No.105, Block B2, Lotus Apartment, Patliputra, P.S. Patliputra, District- Patna.
7. Pratap Paswan son of Tarnee Paswan, resident of Police Line, Katihar, P.S. Sahayak, District- Katihar.
8. Bijay Kumar son of Girdhari Singh, resident of village- Ekderwa, P.S. Uchk-agaon, District- Gopalganj.
9. Pankaj Kumar Singh son of Ram Dayal Singh, resident of village- Baijalpur Kesho, P.S. Sonapur, District- Saran.
10. Dhiraj Kumar son of Nandlal Paswan, resident of village Aspatal Tola, P.S. Bariarpur, District- Munger.
11. Prabha Kumari wife of Shailendra Kumar Singh, resident of mohalla- Teachers Colony, Bangali Par, P.S. Sheikhpura, District- Sheikhpura.
12. Vinod Kumar Singh son of Shiv Kumar Singh, resident of village- Krishnagarh, P.S. - Krishnagarh, District- Bhojpur.
13. Sanjay Shankar son of Late Shiv Muni Singh, resident of village- Kesath, P.S. Nawanagar, District- Buxar.
14. Anil Kumar Singh son of Nathun Singh, resident of village- Saichani, P.S. Raghunathpur, District- Siwan.
15. Satish Kumar Singh son of Rajkeshwar Singh, resident of village- Urwa, P.S. - Kandawa, District- Chandauli (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Additional Director General of Police (Headquarter), Bihar, Patna.
4. Inspector General of Police (Headquarter), Bihar, Patna.
5. Assistant Inspector General of Police (Welfare), Bihar, Patna.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advocate.
Mr. Harshvardhan Shivsundaram, Advocate.
Mr. Ebrahim Kabir, Advocate
For the Respondent/s : Addl. Advocate General 12

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 29-10-2024

Heard Mr. Bindhyachal Singh, learned senior counsel along with Mr. Harshvardhan Shivsundaram and Mr. Ebrahim Kabir, learned counsels appearing on behalf of the petitioners and learned Additional Advocate General-12 for the State.

2. The petitioners in paragraph no. 1 of the present writ petition have sought, *inter alia*, following relief(s), which are reproduced hereinafter:-

“(1) To issue appropriate direction, order or writ in the nature of Certiorari quashing the part of order issued by the Inspector General of Police (Headquarter), Bihar, Patna as contained in memo no. 49 dated 23.01.2024, memo no. 58 dated 25.01.2024 and memo no. 158 dated 29.02.2024 (Annexure- P/7 series) by which petitioner no. 2 to 16, who are office bearers of the Bihar Police Association, Patna have wrongly been transferred in utter violation of the Government instructions issued time to time with respect to transfer of office bearers of the service associations/employees unions.

(ii) To issue appropriate direction, order or writ in the nature of Certiorari quashing the letter no. 123 dated 12.03.2024 (Annexure- P/10) issued by the Inspector General of Police (Headquarter), Bihar, Patna by which the concerned authorities have been directed to relieve the office bearers of the Bihar Police Association with effect from 01.03.2024.

(iii) To issue appropriate direction, order or writ in the nature of Mandamus commanding the respondents to stay the transfer of the petitioner no.2 to 16 till completion of their tenure at respective places as office bearer of the Association.

(iv) To grant ad-interim stay on operation of the aforesaid orders.



(v) To grant any other relief or reliefs to which the petitioners are entitled for.

3. The writ petition was heard on 18.04.2024. A direction was given to the Director General of Police, Patna for filing counter affidavit on or before 25th of April, 2024. A comprehensive counter affidavit has been filed giving reason as to why the grievance of the petitioners, who were transferred to different police stations for discharging duties cannot be interfered merely because they are holding elected post of executive committee of respective Associations. This Court *vide* order dated 25.09.2024 framed legal issues to be decided *inter alia*, the same are reproduced hereinafter:-

“(i) Rule 712 (2) of the Police Manual is ultra vires Constitution because of the fact that it discriminates the provisions of equal pay for equal work and the elected members of the Executive Committee of the Bihar Police Association will not be posted in the Police Stations/Outposts/Phanry (फैरी) to discharge their duties by dint of their selection as officer bearers of the Association.

(ii) whether any such Government order in this behalf creates discrimination in between the members of the force.

(iii) whether the names of transfer of a police station and discharging duties can be recollected by passing a Resolution by the Police Department. Relieving the office bearers of the Association from discharging any duties and so long they will be office bearers, they will discharge the function of the Association staying in the police line.”

4. Today, learned Additional Advocate General No.12 appearing on behalf of the State informed this Court that



the issues framed *vide* the order dated 25.09.2024 need not be gone into, considering the fact, that as per the conditions laid down in Clause 5 of the transfer order No. 1/04-09-07-2024 dated 23.01.2024, petitioners are only required to join their place of transfer for considering their representation as per Clause 5 of the transfer order. Clause 5 inherently contains the protection in view of the relief claimed by the petitioners in the present writ petition. Learned counsel further submitted that the issues, as framed, have already been settled by the Hon'ble Supreme Court in several decision. In this regard, he has placed reliance on the law laid down by the Apex Court in the case of **S. C. Saxena Vs. Union of India & Ors.**, reported in (2006) 9 SCC 583 and other reporters and government circulars issued from time to time.

5. Mr. Bindhyachal Singh, learned senior counsel has also admitted that the matter be decided in view of the settled principle of law laid down by this Court, as well as, by the Hon'ble Supreme Court.

BRIEF FACTS:

6. To decide the writ petition, I find it proper to give brief facts of the case and the circumstances, under which the writ petition has been filed.

7. The petitioners who were altogether sixteen in



numbers had approached this Court through Bihar Police Association through its President Mrityunjay Kumar Singh (petitioner deleted). However, they amended the cause title and have approached this Court in their individual capacity. A counter affidavit pursuant to the order of this Court, duly sworn by the Director General of Police, Bihar is on record. The petitioners have challenged the order as contained in Memo No.49 dated 23.01.2024, Memo No.58 dated 25.01.2024 and Memo No.158 dated 29.02.2024, issued under the signature of Inspector General of Police (Headquarter), Bihar, Patna, by which, petitioners no.1 to 15, who are office bearers of the Bihar Police Association, Patna have been transferred. Petitioners have further sought quashing of order issued vide Memo No.123 dated 12.03.2024, by which they were directed to relieve the office bearers with effect from 01.03.2024. Aggrieved by the said orders, the petitioners have prayed to stay the transfer till their completion of tenure. Subsequent to the transfer order, the petitioners filed representation without joining the new place of posting through the SP/Range DIG/IG of the new posting places in spite of the fact that such request through any channel or medium was not required to be considered, however, the petitioners remained under consideration due to various issues involved and the petitioners



were allowed to withdraw their February, 2024 salary, so that, they may not face any financial difficulty and immediately join their new posting from the following month of March, 2024 and instead of complying the said order, the petitioners filed the present writ petition.

8. The main contention of the petitioners is that the State Government has issued letter No.483 dated 17.05.2006 communicated by the Cabinet Secretariat Department, Government of Bihar which *inter alia* provides for a stay of the transfer of office bearers of the recognized Association for a maximum period of two years and only once in entire service period of any employee.

9. The Government of India had enacted Police Forces (Restriction of Rights) Act, 1966, which provides for restriction of certain rights conferred in by part III of the Constitution applicable to the members of the police force for the maintenance of public order and maintenance of discipline among them. The Bihar Government also framed Bihar Government Servants (Recognition of Service Association) Rules, 1960 and petitioners' association was required to be recognized as per Rule 5(e) of the aforesaid Rules, 1960 and other formalities like audited statement of account and minutes relating to Annual General Meeting were required to be filed by



the recognized Association before first day of July each year. Aggrieved by the transfer order, the petitioners have approached this Court for setting aside the same, being office bearers of the Association.

SUBMISSION ON BEHALF OF THE PARTIES.

10. Mr. Bindhyachal Singh, learned senior counsel appearing on behalf of the petitioners, submitted that the petitioners, who are the office bearers of their respective associations are required to be considered in light of Letter No.483 dated 17.05.2006, communicated by the Cabinet Secretariat Department, Government of Bihar and the petitioners are not required to join in accordance with the direction contained in Clause 5 of the transfer order, rendering the claim of the petitioners ineffective, once the petitioners join their place of transfer. Learned senior counsel further referring to the office order dated 26.09.2019 issued under the signature of the Director General of Police submitted that the petitioners who are office bearers of their respective Association and holding different posts also seek protection of the office order dated 26.09.2019 issued by the Director General of Police and similar subsequent office orders by which protection has been granted to the office bearers to remain at Headquarter, till the expiry of their tenure. Learned senior counsel submitted that



uniformity should be maintained considering the past precedence followed in respect of the office bearers. Learned Senior Counsel further informs that by not considering their representation within time and at the same time not making payment of their salary from March, 2024 till date has defeated the mandate of Constitution and the Rules governing the service conditions of the petitioners.

11. *Per contra*, learned AAG 12 submitted that a comprehensive counter affidavit has been filed by the Director General of Police, Bihar giving the details relating to the petitioners and making specific submission in paragraph no.10 that petitioners have completed their stipulated tenure and some of them remained for eight years in the same range/unit in their current ranges/units and their transfer orders which have been issued as per the provision of Section 10(1) of the Bihar Police Act, is not required to be interfered with and no question arises to stay or revoke their transfer orders as that would be in contravention of the said provision. So far as the formation and working of police association is concerned, Rule 712(c) of the Bihar Police Manual provides for forming of association or associations, which must be recognized by the Government as per Section 3(1) of the Police Forces (Restriction of Rights) Act, 1966. In light of Act, 1966, no member of police force, shall



without the express sanction of the Central Government or of the prescribed authority, be a member of or be associated in any way with the trade Union, labour Union, political association or with any class of trade unions, labour unions or political associations, can form an association. He further submitted that several conditions have been laid down in the 1966 Act and more so the petitioners were already communicated *vide* letter No.7972 dated 12.11.2020 to the extent that there is no approval of formation of Bihar Police Association, nor there is any record to show that Government has approved the constitution and rules. Learned counsel further submitted that so far as reliance on letter No. 483 dated 17.05.2006 communicated by Cabinet Secretariat, Government of Bihar is concerned, the same concerns with the civil services employees, who have formed the association and is recognized and will have no application so far as petitioners are concerned who are in uniform service and have to maintain discipline. Learned counsel referring to paragraph no.19 of the counter affidavit, submitted that it has been clearly stated that the officers who are aggrieved by the transfer order and have submitted their representation, their representation can only be considered after joining the new place of posting. Learned counsel further submitted that law in respect of transfer is well settled by the Apex Court in case of



S. C. Saxena (Supra) in which issues which have been framed in the present writ petition have already been decided.

ANALYSIS, CONCLUSION & FINDINGS:

12. The transfer order is assailed by the petitioners in the present writ petition, *inter alia* on the ground that the petitioners are elected members holding the post of office bearers of association of Police of Home Department (Police). This Court had formulated issues *vide* order dated 25.09.2024, which I find that the questions involved have already been decided by the Division Bench of this Court *vide* order dated 09.09.1998 in case of **Kalp Nath Singh Versus the State of Bihar & Ors.** (L.P.A. No.876 of 1998 arising out of CWJC No.4924 of 1998), reported in **1998 SCC Online Pat 556**, wherein the Division Bench while considering the grievance of the appellant/petitioner for revoking or recalling the transfer order and representation which was rejected had not interfered with the transfer order, holding that it is well settled principle of law that transfer is concomitant of service condition and is made in exigency of administration and, therefore, no interference in writ jurisdiction is called for save in cases, where order of transfer is passed in colourable exercise of jurisdiction or with *mala fide* intention or is against statutory provision of law and is penal in nature. The transfer order cannot be interfered in view



that every order passed on the administrative side cannot be subjected to the rigors of principle of natural justice. In support of the view, the Division Bench relied on the Apex Court decision in the case of **Union of India v. Ex Constable Amrik Singh** reported in **(1991) 1 SCC 654 : AIR 1991 S.C. 564**), wherein it has been held that the administrative order does not require to contain reasons and so it is not necessary for the authority concerned to record or assign any reason while passing any administrative order so far as the service conditions of the petitioners, who are in disciplined force is concerned. The Court further held that interference is required in transfer order where it is *mala fide* or has been passed on extraneous consideration.

13. From the pleadings made in the present writ petition, I find that there is neither any statement in respect of the allegation, nor any evidence has been brought on record. The petitioners have failed to substantiate the biasness, arbitrary, mala fide and punitive action on part of the respondents. The only ground on which the petitioners seek interference of this Court is on the ground that their representation has been kept pending without any reason and the same is required to be considered. The difficulty shown by the petitioners is that if they proceed to join the transfer post, their grievance will



become *infructuous*. I find that this Court cannot take such extreme view to interfere with the transfer order in view of the law laid down by the Hon'ble Supreme Court.

14. The law relating to transfer is no more *res integra* particularly in respect of the discipline/uniform service and this Court also has laid down the guidelines contained in CWJC No.10525 of 2016 following the several Apex Court decisions. In the cases of **Gujarat Electricity Board v. Atmaram Sungomal Poshani** reported in **(1989) 2 SCC 602 : AIR 1989 S.C. 1433**), **Union of India and Ors. Vs. S. L. Abbas**, reported in **1993 AIR 2444** and subsequent several decisions of the Apex Court, it has been held that transfer is an incidence of service and is made in administrative exigency. Normally, it is not interfered by the Court. It has also been held by the Apex Court that the transfer policies are in the form of executive guidelines and hence there is no statutory force which affirms the primitive of the government to transfer its employees to any place of posting in administrative exigency. The transfer guidelines are subservient to public interest as has been held in the case of **State of U.P. & Ors. Vs. Gobardhan Lal** reported in **AIR 2004 Supreme Court 2165**. Same principle has been reiterated by Hon'ble Supreme Court in the cases of **Union of India and Ors vs. Ganesh Dass Singh** reported in **1995 (supp)**



3 SCC 214, Union Of India and Ors. vs Sri Janardhan Debanath and Anr. reported in **(2004) 4 SCC 245**. Reiterating the above principle of transfer, the Hon'ble Supreme Court in the matter of **State of Haryana & Others Vs. Kashmir Singh and another** reported in **(2010) 13 SCC 306** has specifically considered the judicial review by the Court and power of authority in regard to transfer of police personnel and held as under:-

“12. 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

14. 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.

15. This Court also held in Divisional Manager, Aravali Golf Club & another vs. Chander Hass & another JT 2008(3) SC 221 and Common Cause vs. Union of India & others - (2008) 5 SCC 511 that Judges must observe judicial restraint and must not ordinarily encroach into the domain of the legislature or the executive.”

15. The Apex Court has reiterated the above view in Paragraph Nos. 14 and 15 in the case of **Municipal Council, Neemuch Vs. Mahadeo Real Estate & Ors., reported in (2019) 10 SCC 738** has made following observations which is, *inter alia*, reproduced hereinafter:

“14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of “Wednesbury unreasonableness” or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

15. This Court recently in W.B. Central School Service Commission v. Abdul Halim, reported in (2019) 18 SCC 39 had again an occasion to consider the scope of interference under Article 226 in an administrative action:

“31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or



whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari”

16. The Supreme Court has specifically held that the court must not ordinarily interfere in administrative matters and maintain judicial restraint.

17. In case of **S. C. Saxena (Supra)**, it has been categorically held that the tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

18. At the same time I find that the judgment of the Apex Court in **Prakash Singh Vs. Union of India, reported in (2006) 8 SCC 1**, wherein the Apex Court directed for constituting of Police Establishment Board by giving several directions to the Central Government, State Government and the Union Territories to establish Police Establishment board with object of insulating the police from political pressures and other extraneous considerations in the matter of their transfers, posting, promotions and other service related matters. I find to reproduce following direction *inter alia* contained therein:



“Police Establishment Board (5). There shall be a Establishment Board in each State which shall decide all transfers, posting, 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 the 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 postings 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 promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.”

(emphasis supplied)

19. Based on the above principle and in view of the information contained in the writ petition, supplementary affidavit and the counter affidavit, it appears that the petitioners have remained posted at their respective place of posting for more than three to four years and some of them even eight years, mandating their transfer in light of several guidelines issued from time to time and also in view of the fact that as per provision of Section 10(1) of Bihar Police Act, 2007, the transfer has been carried out on the basis of completion of stipulated tenure of the petitioners. In the present case, following the direction of the Election Commission to carry out transfer of officials before 29.01.2024, the transfer order as



contained in Memo No.49 dated 23.01.2024 has been issued with respect to 3328 officers of the rank of sub-inspectors, who had completed their tenures as provided by the Bihar Police Act. Similarly, a transfer order, as contained in Memo No.58 dated 25.01.2024 has been issued with respect to 528 officers of the rank of inspectors who had completed their tenures as provided by the Bihar Police Act. Further 271 Assistant sub-inspectors were given the officiating charge of sub-inspector to fill the vacancies in the Sub-inspector rank and on being given the higher charge, these Sub-inspectors were transferred and posted *vide* Memo No.158 dated 29.02.2024 issued under the signature of Inspector General of Police (Headquarter), Bihar, Patna. Specific statement has been made in paragraph no.19 that in view of Clause 5 in all these transfer orders which categorically provide that if any officer was inconvenienced or aggrieved by the said transfer order, he could submit his grievance/request after joining the new place of posting through the District SP/Range DIG/IG of the new posting place. I find that the act of the respondents in keeping pending the representation filed by the petitioners can also not be appreciated at the same time. Once they allege that the petitioners have chosen to disregard, the direction contained in transfer order and have allowed to withdraw the salary for the month of February, 2024.



20. Therefore, in view of the law laid by the Apex Court without going into the merits of the case or taking into information in paragraph no.15 of the counter affidavit that petitioners no.1 to 15 don't have clean service record, as required by letter number 483 dated 17.05.2006, I don't want to interfere in any manner, however, I find that by not disposing of the representation of the petitioners leading to penal consequences, insofar as, the petitioners have not been paid salary after February, 2024 and also in absence of any disciplinary action taken against them, if correct, the same is against the mandate of Article 21 of Constitution of India.

21.The Director General of Police is directed to take decision on the representation of the petitioners filed by the respective petitioners in their individual capacity well within a period of one week from the date of communication of this order without any further delay.

22. The writ petition is, accordingly, disposed of.

23.There shall be no order as to cost.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.11.2024
Transmission Date	N.A.

