

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH		
1)	CWP-4736-2024 Date of Decision:15.03.2024	
AMANDEEP SINGH		 Petitioner
Versus		
STATE OF PUNJAB AND ANOTHER		 Respondents
2)	CWP-4767-2024	
HARPREET SINGH		Petitioner
Versus		
STATE OF PUNJAB AND ANOTHER		Respondents
3)	CWP-4863-2024	
JASWANT SINGH		Petitioner
Versus		
STATE OF PUNJAB AND ANR		Respondents
4)	CWP-4909-2024	
AVTAR SINGH		Petitioner
Versus		
STATE OF PUNJAB AND ANR		Respondents
5)	CWP-5306-2024	
PARAMJIT SINGH		Petitioner
Versus		
STATE OF PUNJAB AND ANOTHER		Respondents
6)	CWP-5728-2024	
SANDEEP KUMAR AND OTHERS		Petitioners
Versus		
STATE OF PUNJAB AND OTHERS		Respondents

2024:PHHC:037465

.....Petitioner

.....Respondents

.....Petitioner

.....Respondents

.....Petitioners

.....Respondents

Mr. Aman Dhir, DAG, Punjab.

2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 30.11.2023 (Annexure P-1) whereby respondent No.2 has transferred

petitioner from his parent District Amritsar to District Jalandhar.

3. The petitioner on 07.11.2011 was enrolled with respondent-department as Constable. Owing to matrimonial discord, his wife lodged FIR No.17 dated 20.05.2022, under Sections 406 and 498A of IPC against him. The Investigating Officer after completing investigation filed his report under Section 173 Cr.P.C. The report was filed on 22.02.2023 and since then trial is pending before Judicial Magistrate 1st Class, Amritsar. The respondent, on account of pendency of said trial, by impugned order dated 30.11.2023 has transferred the petitioner from District Amritsar to District Jalandhar.

4. Dr. Sumati Jund, Advocate submits that petitioner has been transferred in contravention of Rule 14.15 (5) of Punjab Police Rules, 1934 (for short '1934 Rules'). As per said rule, an employee cannot be transferred from one District to another District, if prosecution has been instituted against him. The police, in the case of petitioner, has already filed its report, thus, he cannot be posted outside the District Amritsar. The respondent has issued instructions dated 24.01.2023 contrary to Rule 14.15 (5) of 1934 Rules. It is settled proposition of law that executive instructions cannot be contrary to Rules. The instructions dated 24.01.2023 are in clear contradiction of Rule 14.15 (5) of 1934 Rules, thus, these instructions need to be ignored and majesty of Rules deserves to be upheld.

This Court vide order dated 15.03.2021 in CWP No.12011 of 2020 directed the respondents not to post an officer in a District where criminal case is pending against him. The State of Punjab has assailed aforesaid order by way of Intra-Court Appeal. A Division Bench of this

Court in LPA No.631 of 2021 has issued notice of motion as well as notice re: Stay. The Division Bench has further ordered to register the case as Suo Motu Public Interest Litigation. As State has assailed order dated 15.03.2021, any instruction issued in compliance of said order is bad in the eye of law because State itself has not accepted said order and filed Intra-Court Appeal. The impugned order is based upon order dated 15.03.2021 passed by this Court in CWP No.12011 of 2020 as well as instructions dated 24.01.2023 issued by State Government. The Writ Petition No.12011 of 2020 stands dismissed as withdrawn vide order dated 12.05.2023 passed by this Court, thus interim order dated 15.03.2021 has lost its significance.

5. Per contra, learned State counsel submits that petitioner has not considered amended Rule 14.15 (5) of 1934 Rules. As per amended rule, an officer despite institution of criminal proceedings may be transferred, if especially permitted or ordered by Inspector General of Police. In the case in hand, the transfer is specifically ordered by Director General of Police, thus, petitioner could be transferred despite institution of criminal proceedings. The Government has issued instructions dated 24.01.2023 with respect to criminal cases pending against its officers. The instructions have been issued to make a uniform policy with respect to posting, suspension and dismissal of officers who are facing criminal cases or have been convicted. As per these instructions, a Government Official may be transferred from one District to another District. In case alleged offence involves moral turpitude, the officer is transferred to a post which does not involve public dealing and in case no moral turpitude is involved, the officer is posted outside the District where FIR is

registered.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The conceded position emerging from record is that the petitioner on 07.11.2011 joined Punjab Police as Constable. Owing to matrimonial discord, his wife lodged FIR No.17 dated 20.05.2022, under Sections 406 and 498A of IPC against him. The police after completing investigation has filed challan against him and matter is pending before JMIC, Amritsar. The petitioner belongs to Amritsar District cadre and he has been transferred to District Jalandhar. As per Rule 14.15 (5) general rule is that an officer shall not be transferred from a District where criminal proceedings have been instituted against him, however, Inspector General of Police may especially order or permit to transfer.

8. The case of the petitioner rests upon Rule 14.15 (5) of 1934 Rules which is reproduced as below:

“(5) No police officer against whom criminal proceedings have been instituted in a district shall not be transferred from there, before the final order is passed in respect of such proceedings unless such transfer is specially permitted or ordered by the Inspector-General.”

From the perusal of above quoted rule, it is evident that a police officer against whom criminal proceedings have been instituted shall not be transferred to another District until the final order is passed in respect of such proceedings, however, the Inspector General may specially permit or order to transfer the said officer. Meaning thereby, general rule is that an officer against whom criminal proceedings are pending shall not be transferred out of the district, however, Inspector

General may transfer him.

9. Sections 3 & 4 of The Punjab Police Act, 2007 (for short '2007 Act') provide that cadre of subordinate rank of officers would be State Level Cadre and they may be posted in any part of the State. Sections 3 and 4 of 2007 Act are reproduced as below:-

***“CONSTITUTION AND ORGANIZATION OF
POLICE SERVICE***

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, 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.

4. Subject to the provisions of this Act,-

(a) the Police Service shall consist of such numbers in various ranks and have such organization or cadres, as the State Government may, by general or special orders, determine, and shall include the members of the Indian Police Service, allocated or deputed to the State;

(b) 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;

(c) notwithstanding anything contained in sub-clause(b), a member of the Police Service may be allowed to be deputed on deputation from one cadre to another cadre or organisation or department, as per rules;

(d) the direct recruitment to various subordinate ranks in the Police Service shall be made through a State Level Police Recruitment Board or District Level Police Recruitment Board in a transparent manner;

- (e) *the mode of recruitment, pay, allowances and other service conditions of the members of the Police Service shall be such, as may be prescribed;*
- (f) *the State Government shall provide for employment opportunities to women in the Police Service and may provide for separate physical standards for their recruitment; and*
- (g) *the State Government may restructure the district police in order to provide the public with an officer-oriented civil interface of the police in such manner, as may be prescribed.”*

[Emphasis Supplied]

10. From the conjoint reading of Rule 14.15(5) and Section 3 of 2007 Act, it is evident that a police officer may be posted in any part of the State. The authorities have been specified which can order to transfer their subordinates. As per Rule 14.15(5), Inspector General has been authorized to transfer an officer from one District to another against whom criminal proceedings are pending. The petitioners are concededly facing criminal proceedings. Investigating Officer after completing investigation has already presented challan and matter is pending before the Trial Court.

11. The main plank of argument of the petitioner is that in view of pendency of criminal proceedings, he cannot be transferred out of district. The mandate of Rule 14.15 is clear. As per Section 3 read with 4 of 2007 Act, the petitioner may be posted in any part of the State. The petitioner is not disputing the fact that transfer has been made by a competent officer.

12. In the wake of mandate of Rule 14.15 read with Sections 3 and 4 of 2007 Act, the contention of the petitioner that he cannot be

transferred out of District cannot be countenanced, accordingly, hereby rejected.

13. The petitioner has further pleaded that State Government has issued instructions dated 24.01.2023 in the wake of order dated 15.03.2021 passed by Single Bench of this Court in CWP No.12011 of 2020. The respondent has preferred intra-court appeal against the said order, thus, instructions issued by Government cannot be acted upon especially when main writ petition has been dismissed as withdrawn and Division Bench has ordered to register the matter as *suo motu* PIL.

14. Before advertng with the arguments of the petitioner, it would be apt to notice order dated 15.03.2021, passed by this Court in CWP No.12011 of 2020. The relevant extracts of aforesaid order are reproduced as below:-

“It has been stated in the affidavit by the Additional Chief Secretary, Department of Home Affairs and Justice, Punjab that the State has taken a decision to constitute a committee to frame a policy with regard to action to be taken in those cases where the police officers have been convicted. Learned State counsel submits that the committee is headed by the Additional Chief Secretary, Department of Home Affairs and Justice, Punjab. He also submits that Mr. Parmod Kumar, Director General of Police, Provisioning and Modernization and Mr. Amarjot Singh Gill, Former Director General of CRPF have been included in the committee. He seeks more time to enable the committee to frame a policy.

The committee shall also examine the issue of officers against whom FIRs have been registered and trials are pending as there has to be uniformity in dealing with such cases on the basis of their nature and gravity.

It is further directed that till the committee arrives at a decision and considers the individual cases of the officers, no police

officer who is charge-sheeted and / or convicted in a criminal case involving moral turpitude, shall remain posted at a post having public dealing. Furthermore they shall not be assigned investigation, either as investigating officer or in a supervisory capacity and will not be posted in the vigilance bureau till the final decision is taken by the committee. They shall also not be posted in the district where their criminal case is being tried. Status report with regard to the progress made by the committee shall be filed before the next date of hearing.”

15. The respondent preferred intra-court appeal against aforesaid order. A Division Bench issued notice of motion on 31.08.2021 as well as notice regarding stay. It is apt to notice that order dated 15.03.2021 was never stayed. The LPA Bench in its order dated 20.03.2023 noticed question of Sanctity of Roster. The Court observed that issues raised by Single Judge deserve to be considered and further ordered to register the matter as *suo motu* PIL. The relevant extracts of the order dated 20.03.2023 read as:-

“In view of the aforesaid, as the issues raised by the learned Single Bench deserve consideration and in fact have been considered by this Court since the year 2021 and in response thereto, several compliance reports have been filed by the State, we deem it appropriate to take up these issues regarding the action to be taken against tainted and convicted police officers as well as regarding posting of State Service officers on the posts that have to be filled up or occupied only by the IPS officers, and register it as suo motu PIL. This issue, henceforth, shall be dealt with by the Bench assigned to hear PILs. As far as individual cases and issues from which this PIL arises are concerned, that are pending before the learned Single Bench, the same would be dealt with by the concerned Single Bench(es) strictly as per rules and roster.

The State of Punjab is directed to implead Union of India as party to this appeal and serve a copy of the complete paper-

book on the learned Additional Solicitor General of India. Learned Additional Solicitor General of India would also seek instructions in respect of the issues involved.

Learned Additional Advocate General, Punjab, prays for further time to file status report as to why the head of the police administration should not be an IPS officer.”

16. The Division Bench in its above-noted order noticed that State has filed several compliance reports. The notice of motion in the said appeal was issued on 31.08.2021 and the State Government on 24.01.2023 issued instructions with respect to posting/suspension/dismissal of officers who are facing criminal trial. The Court noticed the fact that several compliance reports have been filed, however, did not observe in one or another way with respect to instructions dated 24.01.2023 issued by the State Government. Essence of the order is that instructions dated 24.01.2023 are undisputed. It is further apt to mention here that the petitioner has not assailed instructions dated 24.01.2023. This Court does not find any valid reason to ignore the said instructions especially when there is no challenge to said instruction.

17. The grouse of the petitioner that in view of dismissal of CWP No.12011 of 2020 as withdrawn and filing of LPA by the State against order dated 15.03.2021 passed by Single Judge, the State could not rely upon order dated 15.03.2021 is misconceived. Single Bench of this Court by order dated 15.03.2021 directed the respondent to make an interim arrangement till the issuance of instructions by Committee. The respondent constituted a committee and on the basis of the report of the committee, issued instructions dated 24.01.2023. The instructions are executive instructions and these are not based upon interim order dated 15.03.2021 passed by this Court. The instructions could be issued even

without aforesaid order passed by this Court. Further, withdrawal of writ petition does not mean that *suo motu* instructions issued by this Court have become irrelevant or non-existing. The Division Bench has virtually converted the directions and observations of Single Judge into Public Interest Litigation and ordered to list the matter before Division Bench. The main writ petition has been withdrawn, however, the *suo motu* issues evolved by Court still exist and the Division Bench is proceeding with the matter.

18. In the wake of above facts and findings, this Court does not find any infirmity in the impugned orders, accordingly, the petitions deserve to be dismissed and accordingly dismissed. The petitioners are at liberty to join their transferred place of posting.

(JAGMOHAN BANSAL)
JUDGE

15.03.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>