A STATE OF HARYANA AND OTHERS

v.

KASHMIR SINGH AND ANOTHER ETC. ETC.

(Civil Appeal No. 8690-8701 of 2010)

OCTOBER 06, 2010

B **[MARKANDEY KATJU AND T.S. THAKUR, JJ.]**

Service Law:

C *Punjab Police Rules, 1934 – r. 1.5 – Limits of jurisdiction and liability to transfer – Transfer orders of various police personnel of various grades from one district/range to another – Challenge to – Transfer orders quashed by High Court – On appeal, held: Police establishment of a State constitutes one police force and its members are liable to be posted* D *anywhere in the State – Transfer can be done from one district/ range to another and there is no absolute prohibition for doing so – Transfer/posting of policemen should be left to the discretion of the State Authorities – They are the best to assess the necessities of the administrative requirements of* E *the situation – Transfer being an incidence of service and purely administrative matters, courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal – Courts should maintain judicial restraint – Thus, order of High Court set aside – Judicial restraint – Administrative* F *law – Indian Police Act, 1861 – ss. 2 and 4.*

The respondents-Constables, Head Constables, Exemptee Head Constables, Assistant Sub-Inspectors and Sub-Inspectors, serving in various districts in the G **State of Haryana were ordered to be transferred to other districts and ranges. The respondents challenged the transfer orders. The Division Bench of the High Court quashed the transfer orders. Therefore, the appellants-State filed the instant appeals.**

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Allowing the appeals, the Court

HELD: 1. A perusal of the relevant provisions of the Indian Police Act, 1861 clearly shows that the entire police establishment under the State Government is one integrated police force, though for better administration the State has been sub-divided into districts/ranges. Rule 1.5 of the Punjab Police Rules, 1934 clearly shows that police officers constitute one police force and are liable to be posted anywhere in the State. Moreover, Rule 1.5 also clearly states that no sub-division of the force territorially or by classes, affects this principle. A plain perusal of the shows that transfer can be done from one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constables and Head Constables at the district level and of ASIs and SIs at the range level is maintained in the parent district/range despite the transfer. Promotion/confirmation is also given strictly as per the seniority in the parent district/range level, as per Memo No. 43515-22/E-(III) dated 10.8.2010. [Paras 12 and 13] [906-F-H; 907-A-B]

2.1 Transfer ordinarily is an incidence of service, and the courts should be very reluc ınt to interfere in transfer orders as long as they are not clearly illegal. In particular, 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 range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and the courts must not ordinarily

A **interfere in administrative matters and should maintain judicial restraint. [Para 14] [907-C-E]**

2.2 The High Court took a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties would be created for the State administration since it would not be able to transfer/deploy its police force from one place where there might be relative peace to another district or region/range in the State where there might be disturbed law and order situation and thus, the requirement of more police. The courts should not interfere with purely administrative matters except where it is 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. There must be some free-play of the joints provided to the executive authorities. [Para 16] [908-C-E]

Tata Cellular vs. Union of India **AIR 1996 SC 11 – relied on.**

Jawaharlal Nehru University vs. Dr. K.S. Jawatkar and Ors. **(1998) Suppl. 1 SCC 679**; *G.Varandani vs. Kurukshetra University and Anr.* **(2003) 10 SCC 14 – held inapplicable.**

Divisional Manager, Aravali Golf Club and Anr. vs. Chander Hass and Anr. **JT 2008(3) SC 221**; *Common Cause vs. Union of India and Ors.* **(2008) 5 SCC 511 – referred to.**

3. The impugned judgment of the High Court is set aside and the writ petitions are dismissed. [Para 18]

Case Law Reference:

AIR 1996 SC 11	**Relied on.**	**Para 14**
(1998) Suppl. 1 SCC 679	**held inapplicable.**	**Para 15**

(2003) 10 SCC 14	**held inapplicable.**	**Para 15**
JT 2008(3) SC 221	**Referred to.**	**Para 17**
(2008) 5 SCC 511	**Referred to.**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8690-8701 of 2010.

From the Judgment & Order dated 31.05.2006 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 6941, 7109, 7607, 7665, 7695, 7837, 8018, 8310, 8636, 8704, 8814 & 9117 of 2006.

Manjit Singh, AAG, Kamal Mohan Gupta for the Appellants.

Jagdev Singh Manhas for the Respondents.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

2. These appeals have been filed against the common impugned judgment of the Punjab and Haryana High Court dated 51.5.2006 in CWP Nos. 7695, 7607, 7665, 7837, 8636, 8704, 8814, 9117, 6941, 8018 and 8310 of 2006.

3. Heard learned counsel for the parties and perused the record.

4. The respondents herein were serving in various districts in the State of Haryana as Constables, Head Constables, Exemptee Head Constables, Assistant Sub-Inspectors and Sub-Inspectors (hereinafter in short as ASI and SI, respectively). They were ordered to be transferred to other districts and ranges by the Inspector General of Police. The respondents challenged the transfer orders contending that in view of the Punjab Police rules so far as Constables, Head Constables and Exemptee Constables are concerned, they could not be transferred outside the district, and so far as ASI and SIs are

A concerned, they could not be transferred outside the range.

5. This contention has been upheld by the Division Bench of the High Court and hence these appeals.

6. With respect, we are unable to agree with the High B Court.

7. Section 1 of the Indian Police Act 1861 defines a 'general police district' as follows :

C "the words 'general police district' shall embrace any presidency, State of place, or any part of any presidency, State or place, in which this Act shall be ordered to take effect".

8. Section 2 of the Act states as follows :

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"**Constitution of the force**. - The entire police establishment under a State government shall, for the purposes of this Act, be deemed to be one police force and shall be formally enrolled, and shall consist of such E number of officers and men, and shall be constituted in such manner, as shall from time be ordered by the State Government".

9. Section 4 of the Act states as follows:

F "**Inspector-General of Police, etc**. - the administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the (State Government) G shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant

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District Superintendents as the (State Government) shall consider necessary". A

10. Thus a perusal of the relevant provisions of the Police Act clearly shows that the State police is one integral unit and does not consist of separate independent units. The overall administrative control of the police in the State is with the Inspector-General of Police (now the Director-General of Police). B

11. We may now also consider the relevant Rules in the Punjab Police rules 1934 (hereinafter referred to as the 'Rules'). Rule 1.4 of the Rules states as follows : C

"**Rule 1.4 – Administrative Division**: - The districts of the province are grouped in Ranges and the administration of all police within each such range is vested in a Deputy Inspector General under the control of the Inspector-General of Police. D

The training school is under the district control of the Inspector-General subject to such delegation of powers as he may make to one or other of the range Deputy Inspector General. The Criminal Investigation Department is administered by a Deputy Inspector General, who also supervises the Finger Print Bureau". E

Rule 1.5 – Limits of jurisdiction and liability to transfer – All police officers appointed or enrolled in either of the two general police districts constitute one police force and are liable to, and legally empowered for, police duty, anywhere within the province. No sub-division of the force territorially or by classes, such as mounted and foot police, affects this principle. F G

Every police officer shall be liable to serve at any place, whether within or outside the State of Haryana and in any organization under the Central government or being ordered so to do by the appointing authority. Every police H

A officer is empowered to under Section 3 of the Police Act 1888 (Central Act 3 of 1988), when necessary, to exercise the powers, functions and privileges of a police officer in any part of India. In the exercise of such functions a police officer is deemed to be a member of the police force of
B the State of Union of India, in which he is at the time".

"**Rule 12.26 – Inter District Transfers**. - Exchange of appointment lower subordinates in districts of the same range or between such police officers in the railway and district police, may be effected subject to the approval of
C the Superintendents concerned (or of the Assistant Inspector General in cases affecting the railway police). A lower subordinate may be transferred to fill a vacancy in a district other than that in which he is serving only with the sanction of the Deputy Inspector General of the range. In
D cases of transfer from and to districts in different ranges, or from and to districts in different ranges, or from and to the railway police, the sanction of both Deputy Inspector General concerned and the Superintendent of Police Railways is required".

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"**Rule 14/15** - 14.15(1) – All enrolled police officers are, under Section 22 of the Police Act, liable for service in any part of the general police district".

12. A perusal of the relevant provisions of the Police Act
F and the Rules thus clearly shows that the entire police establishment under the State Government is one integrated police force, though for better administration the State has been sub-divided into districts/ranges. Rule 1.5 of the Rules clearly shows that police officers constitute *one police force* and are
G liable to be posted anywhere in the State. Moreover, Rule 1.5 also clearly states that no sub-division of the force territorially or by classes, affects this principle. Transfer from one district to another district or from one range to another range can be effected, though with the sanction of certain authorities
H mentioned in Rule 12.26.

13. Thus, a plain perusal of the Punjab Police Rule shows that transfer can be done from one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constable and Head Constables at the district level and of ASI and SI at the range level is maintained in the parent district/range despite the transfer. Promotion/confirmation is also given strictly as per the seniority in the parent district/range level, as per Memo No. 43515-22/E-(III) dated 10.8.2010.

14. 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.

15. The High Court in the impugned judgment has relied upon the decision of this Court in *Jawaharlal Nehru University vs. Dr. K.S. Jawatkar and others* – (1998) Suppl. 1 SCC 679. After carefully considering the said decision we are of the opinion that it has no relevance in the present case. In that decision the facts were that the employees of the Jawaharlal Nehru University were sought to be transferred to the Manipur University as the centre of post graduate studies set up by the Jawaharlal Nehru University at Manipur was closed down and the centre was transferred to Manipur University. This Court held that an employee of one University cannot be transferred to

A another University without his consent. We fail to understand what relevance this decision has with the present case. In the present case, it is not that the respondent employees are being transferred from one employer to another employer. Here the employer remains the same i.e. the State of Haryana. Hence, B the aforesaid decision has no relevance in the present case. For the same reason *G.Varandani vs. Kurukshetra University and another* – (2003) 10 SCC 14 also has no relevance.

16. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is C 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 D 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 E *Justice Holmes* of the US Supreme Court pointed out, *there must be some free-play of the joints provided to the executive authorities.*

17. This Court also held in *Divisional Manager, Aravali* F *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.

G 18. For the foregoing reasons, these appeals succeed and are hereby allowed. The impugned judgment of the High court is set aside and the writ petitions before the High Court stand dismissed. No costs.

H N.J. Appeal allowed.