

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 12765 of 2010****With****SPECIAL CIVIL APPLICATION NO. 3553 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

HADAMATSINH NAHARSINH SISODIYA**Versus****STATE OF GUJARAT & 2**

Appearance in SCA No.12765 of 2010:

MR PP MAJMUDAR, MR SP MAJMUDAR, ADVOCATE for the Petitioner

MR MR RONAK RAVAL, AGP for the Respondent-State

Appearance in SCA No.3553 of 2011:

MR MITUL KE SHELAT with MR KAIVAN K PATEL for the Petitioner

MR MR RONAK RAVAL, AGP for the Respondent-State

CORAM: HONOURABLE MR.JUSTICE C.L. SONI**Date : 31/07/2013****COMMON ORAL JUDGMENT**

1. In these two petitions filed under Article 226 of the Constitution

of India, the petitioners, who are serving as constables, have challenged the orders of their transfer out of the District of Ahmedabad.

2. The case of the petitioner in Special Civil Application No. 12765 of 2010 is that he is transferred in connection with the Hooch Tragedy (*Lattha Kand*) with other police officers by impugned order dated 24.9.2010 in the name of public interest. In the said order, it is stated that his transfer is as per the order dated 20.9.2010 passed by the Director General of Police, Gandhinagar. It is his case that on the allegation of his involvement in the *Lattha Kand* tragedy, he is transferred to Jamnagar without holding any inquiry against him and without there being any administrative exigencies for such transfer at the transferred place. It is his case that since the *Lattha Kand* was highlighted in print and electronic media, he was also included in the mass transfer effected by the respondent authorities.

3. Learned Advocate Mr. Majmudar for the petitioner has pointed out that after the petition was filed, the petitioner was departmentally proceeded and imposed punishment.

4. In Special Civil Application No. 3553 of 2011, impugned order dated 26.10.2010 is passed by Respondent No.2 Police Commissioner, Ahmedabad City transferring the petitioner from Ahmedabad to Amreli as per the order dated 26.10.2010 passed by the Director General of Police in connection with Hooch Tragedy (*Lattha Kand*). The case of the petitioner is that he has been serving as unarmed police constable in Ahmedabad City since 1983 and he was served with charge sheet dated 16.10.2010 alleging his connection with the bootleggers of the city. After serving the charge-sheet, the petitioner is transferred by the impugned order. It is his case that he is being the police constable, could not have been transferred out of Ahmedabad District, except to meet with emergent exigencies at the transferred place. It is his case that his transfer is

by way of punishment as alleged in the charge-sheet served to him. His further case is that as he has been punished departmentally pursuant to inquiry, the cause to continue transfer order does not survive.

5. Both the petitions are opposed by filing reply affidavit on behalf of the respondents to which the petitioners have also filed rejoinder. Stand taken by the respondents in their reply is that since the petitioners were involved in Lattha Kand tragedy, they are transferred in public interest. It is stated that powers are exercised under Bombay Public Act and the Manual and the petitioners have no right to challenge the transfer orders on the ground that their transfer is not for administrative exigencies but the same is by punishment.

6. I have heard the learned advocates for the parties. Learned advocate Mr. P.P. Majmudar appearing for the petitioner in Special Civil Application No.12765 of 2010 and learned advocate Mr. Mitul Shelat with Mr. Kaivan K. Patel for the petitioner in Special Civil Application No.3553 of 2011 made common submissions as under:

- (1) The transfer orders of the petitioners clearly record that the transfer of the petitioners is in connection with hooch tragedy and thus it is not for administrative exigency but by way of punishment.
- (2) Since the petitioners have been departmentally punished, the cause for transfer does not survive.
- (3) The reasons for transfer of the petitioners are not germane to the exercise of powers under Section 28 of the Police Act, 1951 ('the Act' for short).
- (4) It is passed in the name of public interest without reaching to the satisfaction about the requirement of service of the petitioners at the transferred place.

- (5) The affidavit in reply clearly states that the transfer of the petitioners is in exercise of powers under Rule 152 of the Police Manual and Section 28(1) of the Act. These two provisions do not authorize either the State Government or the Director General of Police to transfer the constable for general public interest at the place from where such constable is to be transferred but the powers under these provisions could be exercised in exceptional circumstances to meet with emergent exigencies prevailing at the transferred place.
- (6) The transfer of constable under the above provisions could not be for uncertain or long period but only for the period for which the service of such constable is required at transferred place. Therefore, without providing period for requirement of the service of the petitioners at transferred place for an emergent exigencies, the petitioners could not be continued at the transferred place.
- (7) Transfer of the petitioners is punitive in nature as the transfer is made on alleged involvement or connection of the petitioners with the bootleggers responsible for hooch tragedy for which petitioners were charge-sheeted and punished also. Therefore, transfer of the petitioners is not for any administrative exigency.
- (8) When the transfer of the petitioners is stated to be in exercise of the powers under Rule 152 of the Police Manual and section 28 of the Act, it could not be for the purpose other than as required by the said provisions. As per the said provisions, transfer of any police officer to any place has to be to meet with the emergent exigency

arisen there.

- (9) When the transfer of any police officer is effected in exercise of powers under sec. 28 of the Act, the concerned authority passing order of transfer is under obligation to clearly state as to how long the services of such officer would be required at the place of transfer. If no such requirement is specified or service of such officer is not required for any emergent exigency at the place of transfer, order transferring the officer would stand vitiated. In the present case, even after the interim order passed by this court, the respondents have not stated either the reasons requiring services of the petitioners at the place of transfer or time period for which such requirement of the petitioners at the said place, and therefore, continuing the petitioners at the place of transfer would be in derogation of the legislative mandate envisaged in Section 28 of the Act.

7. In support of the above arguments, learned advocates for the petitioners have placed reliance on the decision in the case of ***Somesh Tiwari Vs. Union of India*** reported in ***2008 Law Suit (SC) 1822***.

8. As against the above arguments, learned Assistant Government Pleader Mr. Ronak Raval for the respondent authorities submitted that the transfer of the petitioners is made in public interest. Mr. Raval submitted that since the petitioners were found involved in hooch tragedy taken place in the city of Ahmedabad, concerned authority decided to transfer the petitioners with other police officers found involved in the said incident and such decision since was taken in larger public interest in exercise of the powers under Section 28 of the Act and Rule 152 of the Police Manual, no illegality could be found with the impugned orders.

9. Learned Assistant Government Pleader Mr. Raval submitted that the respondents have clearly provided duration for which the petitioners are to remain at the place of transfer and therefore, transfer of the petitioners could not be said to be contrary to or *de hors* the powers available with the concerned authorities under Section 28 of the Act and Rule 152 of the Police Manual. Mr. Raval submitted that the law provides that any police officer can be transferred at any place in the State of Gujarat either by the State Government or by the Director General of Police and the Hon'ble Division Bench of this Court recognized such powers under Section 28 of the Act and Rule 152 of the Police Manual. Mr. Raval submitted that there is no prohibition in transferring the constable from one district to another district but in fact, Rule 154(d) provides for transfer of constable from one district to another district if such transfer is considered necessary by the competent authority. Mr. Raval submitted that when the competent authority was satisfied about necessity of such transfer, this court while exercising powers under Article 226 of the Constitution of India, would not like to sit in appeal over the decision of the competent authority. Mr. Raval submitted that pursuant to interim order passed by this Court, affidavit is filed stating that the transfer of the petitioners is for a period of five years and such being necessity felt by the competent authority, it cannot be said that the concerned authorities have acted *de hors* the provisions of Section 28 of the Act and Rule 152 of the Police Manual.

10. In support of his submissions, learned Assistant Government Pleader Mr. Raval has also relied on following decisions:

- (1) In the case of **Rajendra Roy Vs. Union of India and Another** reported in **1993(1) GLH 389**;
- (2) In the case of **Union of India Vs. Ganesh Dass Singh** reported in **1995 (Supp 3) SCC 214**;

- (3) In the case of ***State Bank of India Vs. Anjan Sanyal*** reported in ***(2001)5 SCC 508***;
- (4) In the case of ***State of U.P. And Others Vs. Gobardhan Lal*** reported in ***2004(3) GLH 317***;
- (5) In the case of ***Mohd. Masood Ahmad Vs. State of U.P. And others*** reported in ***2008(1) GLH 280***;
- (6) In the case of ***Rajendra Singh Etc. Etc. Vs. State of Uttar Pradesh*** reported in ***(2009)15 SCC 178***.

11. Having heard the learned advocates for the parties and having perused the impugned orders of transfer, what appears is that the transfer of the petitioner was effected on account of report of inquiry made in connection with hooch tragedy pursuant to which the Director General of Police passed orders for transfer of the police officers found responsible for the tragedy. It is stated in the orders of transfer that the transfer of the petitioners and other police officers is made in connection with hooch tragedy and in public interest. In transfer order of the petitioner of Special Civil Application No. 12765 of 2010, no duration as to how long the petitioner is to remain at the place of transfer is provided whereas in the case of the petitioner of Special Civil Application No.3553 of 2011, the transfer order is with condition that the petitioner and other officers transferred shall not be entitled to make any application for re-transfer in the District of Ahmedabad for a period of five years. Thus, in the case of this petitioner, clear duration of five years is provided in the order of transfer.

12. In the reply affidavit, respondents have clearly stated that the petitioners and other police officers are transferred in connection with the hooch tragedy. Such transfer is stated to be in public interest. It is also stated in the affidavit in reply that the petitioners and other police officers were departmentally proceeded.

13. Thus, there is no dispute about the fact that the transfer of the petitioners is on account of the hooch tragedy taken place in Ahmedabad. Therefore, the transfer orders are not passed to meet with any emergent exigency or in public interest at the places where the petitioners are transferred.

14. The respondents have in their further affidavit stated that the transfer orders are passed in exercise of powers under Section 28 (1) of the Act and Rule 152 of the Police Manual. It is further stated that the provisions of Section 28 (1) of the Act and Rule 152 of the Police Manual empower the Director General of Police to transfer any police officer to any place even outside the District in public interest and since the decision is taken for transfer of the petitioners for five years, there is no illegality in issuing orders of transfer.

15. At this stage, Section 28 of the Bombay Police Act and Rule 152 need to be referred. They read as under:-

“28(1) Every Police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police officer or any number or body of Police officers allocated for duty in one part of the State may, if the State Government or the Inspector- General so directs, at any time be employed on Police duty in any other part of the State for so long as the services of the same may be there required.

(2) Timely intimation shall, except in cases of extreme urgency, be given to the [Revenue Commissioner] and the District Magistrate by this Inspector- General of any proposed transfer under this section, and, except, where secrecy is necessary the reasons for the transfer shall be explained; whereupon the officers aforesaid and their subordinates shall give all reasonable furtherance to such transfer.”

“152. Inter District Transfers in emergencies.-

(1) Under section 28(1) of the Bombay Police Act, 1951, the Inspector General of Police is authorised to make, whenever necessary, inter-district transfers of

police establishments without reference to Government.”

(2) In accordance with the provisions contained in section 28(2) of the Bombay Police Act, 1951 the Inspector General of Police should, except in cases of extreme urgency give timely intimation to the District Magistrate concerned whenever he proposes to transfer or redistribute the Police disposition obtaining in Districts.”

16. Rule 152 of the Bombay Police Manual provides that under Section 28(1) of the Bombay Police Act, Inspector General of Police (now Director General of Police) is authorized to make, whenever necessary, inter-district transfers of police without reference to the Government. Thus, though Director General of Police is authorized for inter-district transfer of the police officer but such transfer has to be in conformity with the provisions of Section 28(1) of the Act. Therefore, though there is absolute power available with the State Government and with the Director General of the Police to transfer any police officer in any part of the State, still such powers could be exercised only for the purposes as intended by the legislature in the provision of Section 28(1) of the Act. Such powers though could be exercised in public interest, it could not be except for the requirement of the service of police officer for emergent exigencies prevailing at the place of transfer. If the legislature intended to give uncontrolled and unrestricted power to the State Government and Director General of Police for employing any police officer in any part of the State without there being requirement of the service of such police officer at the place of transfer, the legislature would not have incorporated the language “for so long as service of same may be there required”. Use of such language by legislature connotes that the service of the police officer could be utilized only till the same is required at the transferred place.

17. Rule 153 provides for ordinary transfer. It is not the case of the

respondents that the transfer of the petitioners is an ordinary transfer. It is the specific case of the respondents that the transfer of the petitioners is in public interest and in exercise of powers under Rule 152 of the Police Manual and Section 28 (1) of the Act.

18. Therefore, the Director General of Police while exercising powers under Section 28(1) of the Act read with Rule 152 of the Police Manual, must satisfy himself about the need/requirement of the services of any police officer at transferred place and also about the period of services for such police officer at the place of transfer. The transfer under this provision can continue till the service of the officer is required at the transferred place.

19. In the present case, no material is produced to show that the transfer orders are passed because the services of the petitioners were required at the place of transfer. What is simply stated in the affidavit-in-reply is that the transfer of the petitioners is for five years and in public interest. Therefore, though the transfer orders are passed in exercise of statutory powers, same are not strictly for the purpose envisaged by the said provisions.

20. At this stage, following decisions on transfer/deputation need to be referred:

(1) In the case of ***Indu Shekhar Singh and others Vs. State of U.P. and others*** reported in ***(2006)8 SCC 129***, Hon'ble Supreme Court has held and observed in para 39 and 40 as under:

“39. A difference between transfer and deputation would be immaterial where an appointment by transfer is permissible, particularly in an organization like CBI where personnel are drawn from different sources by way of deputation. It is one thing to say that a deputationist may be regarded as having been appointed on transfer when the deputation is from one department of the Government to another department, but it would be another thing to say that employees are recruited by different Statutory Authorities in terms of different statutory rules. In a given case, the source of recruitment, the qualification, etc., may be different in

different organizations. The Statutory Authorities, it is trite, are not and cannot be treated to be the departments of the Government. Their employees are governed by the rules applicable to them. Their services are not protected under Article 311 of the Constitution.

40. The State can compel an employee to go on deputation from its parent department to another Public Sector Undertaking unless a statutory rule exists in this behalf. In absence of such a rule, no employer can force an employee to join the services of another employer. Thus, K. Madhavan (*supra*), in our opinion, has no application in the instant case."

(2) In the case of ***Prasar Bharati and others Vs. Amarjeet Singh and others*** reported in **(2007)9 SCC 549**, Hon'ble Supreme Court has explained and interpreted distinction between transfer and deputation in paragraph 13 to 15 as under:

- "13. There exists a distinction between 'transfer' and 'deputation'. 'Deputation' connotes service outside the cadre or outside the parent department in which an employee is serving. 'Transfer', however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.
14. There cannot be any doubt whatsoever that ordinarily no employee can be transferred without his consent from one employer to another. [See *Jawaharlal Nehru University v. Dr. K.S. Jawatkar and Ors.* [(1989) Supp. (1) SCC 679]. But, the said principle has no application in the instant case.
15. A transfer of an employee may be governed by the provisions of a statute or the terms and conditions of a contract of service."

(3) In the case of ***Kavi Raj and others Vs. State of Jammu and Kashmir and others*** reported in **2013(3) SCC 526**, Hon'ble Supreme Court has held and observed in para 24 as under:

- "24. Before concluding, it is essential to deal with certain inferences drawn by the learned Single Judge of the High Court. According to the learned Single Judge, prior consent of an employee is imperative, binding, peremptory and mandatory, before he is posted on deputation outside his parent department. No statutory rule has been brought to our

notice, requiring prior consent of an employee, before his deployment against a post beyond his parent cadre. The mere fact, that the appellants consent was not sought before their posting at the Government Medical College, Jammu (and/or at the hospitals associated therewith) would not, in our view have any determinative effect on the present controversy. Broadly, an employee can only be posted (or transferred) to a post against which he is selected. This would ensure his stationing, within the cadre of posts, under his principal employer. His posting may, however, be regulated differently, by statutory rules, governing his conditions of service. In the absence of any such rules, an employee cannot be posted (or transferred) beyond the cadre to which he is selected, without his willingness/readiness. Therefore, an employee's posting (or transfer), to a department other than the one to which he is appointed, against his will, would be impermissible. But willingness of posting beyond the cadre (and/or parent department) need not be expressly sought. It can be implied. It need not be in the nature of a written consent. Consent of posting (or transfer) beyond the cadre (or parent department) is inferable from the conduct of the employee, who does not protest or contest such posting/transfer. In the present controversy, the appellants were issued posting orders by the Principal, Government Medical College, Jammu, dated 30.12.1997. They accepted the same, and assumed charge as Senior/Junior House Officers at the Government Medical College, Jammu, despite their selection and appointment as Assistant Surgeons. Even now, they wish to continue to serve against posts, in the Directorate of Medical Education. There cannot be any doubt, about their willingness/readiness to serve with the borrowing Directorate. The consent of the appellants is tacit and unquestionable. We are therefore of the view, that the learned Single Judge of the High Court, clearly erred on the instant aspect of the matter."

(4) In the case of ***State of Haryana and others Vs. Kashmir Singh and Another*** reported in **(2010)13 SCC 306**, relied by both the sides, Hon'ble the Supreme Court was dealing with inter-district transfer of the police officer in the context of Rule 12.26 of Punjab Police Rules, which reads as under:

"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 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 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”.

“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”.

Hon’ble the Supreme Court has held and observed in para 10 to 14 as under:

- “10. A perusal of the relevant provisions of the Police Act 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 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 mentioned in Rule 12.26.
11. 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.
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.
13. 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 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, 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.

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.”

21. The decision in the above-said case is on interpretation of different provisions not *parimateria* to the provisions of Section 28 of the Act and Rule 152 of the Manual. However, Hon’ble Supreme Court has observed that the Courts should be reluctant to interfere in transfer orders and leave it to the discretion of the authorities which are in the best position to assess the necessities of the administrative requirement of the situation. The concerned authority may be of the opinion that more policemen are required in any particular district. Thus, though it is always the discretion of the concerned authority to assess the necessity for transfer but then such discretion has to be in line of the concerned provisions of law..

22. The provisions of Section 28 of the Act read with Rule 152 of the Manual came to be considered by Hon'ble Division Bench of this Court in the case of **Haroon Yusufbhai Kadiwala Vs. Director General of Police and Anr.** reported in **2011 (3) GLH (UJ) 8**. Full text of the judgment in the said case is placed on record of Special Civil Application No. 12765 of 2010 with further affidavit filed by the petitioners at page 141. Hon'ble Division Bench in the said case examined legality or otherwise of the order of transfer of police constable made in exercise of the powers under the above said provisions and has held and observed in para 5 to 10 as under:

"5. It would be expedient to quote Sec.28 of the Bombay Police Act, 1951, which reads as under:

"28. Police Officer to be deemed to be always on duty and to be liable to employment in any part of the State.-
(1) Every Police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police Officer or any number or body of Police officers allocated for duty in one part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be there required."

6. We may also reproduce Rule 152 and 153 of the Gujarat Police Manual. Rule 152 reads as under:

"152. Inter District Transfers in emergencies. - (1) Under section 28(1) of the Bombay Police Act, 1951, the Inspector General of Police is authorised to make, whenever necessary, inter-district transfers of police establishment without reference to Government.

(2) In accordance with the provisions contained in section 28(2) of the Bombay Police Act, 1951, the Inspector General Police should, except in cases of extreme urgency give timely intimation to the District Magistrates concerned whenever he proposes to transfer or redistribute the Police disposition obtaining in Districts."

Clause (1) and sub-clause (a) reads as under:

"153. Ordinary transfers of Police Officers, men and Ministerial staff. - Transfers may be effected as follows:-

"(1)(a) The Inspector General may transfer Assistant Commandants, Adjutants and Quarter Master (Deputy Superintendents of Police) from one Group to the other Assistant Public Prosecutors, Ministerial staff and members of the Police force of and below the rank of Police Inspectors, from one place to another in the State; al Inspectors, Assistant Public Prosecutors and Sub-Inspectors to and from Criminal Investigation Department and the Police Training School."

7. On perusal of various provisions of the Gujarat Police Manual and the Bombay Police Act, and more particularly, Cl. (1) of Sec. 28 of the Bombay Police Act which states that every Police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police Officer or any number or body of Police officers allocated for duty in one part of the State, may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State may, if the State Government or the Inspector-General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be there required.
8. A plain reading of the Section itself suggests that the appellant petitioner could have been transferred, but the only aspect which needs to be considered is as to for how long the appellant-petitioner would be kept at that particular place on transfer. We feel that the State Government should in cases like the present one should bear in mind and also clarify as to how long the services of the appellant-petitioner would still be required at the place where he has been transferred so that he may not have to stay at the place of deputation for an indefinite period of time. Secondly, we would also like to clarify that the appellant petitioner's lien in the original parent cadre would also be protected. So far as seniority of the appellant-petitioner is concerned, it has been well accepted in the Police Manual that the same will not be disturbed.
9. Our attention has also been drawn to Rule 153, more particularly 153(1)(a) where the emphasis has been laid on the words "and members of the Police force of and below the rank of Police Inspectors, from one place to another in the State". Taking into consideration all the relevant provisions of law, we are of the opinion that the transfer of the appellant petitioner as an Unarmed Head Constable originally posted at Khatodara Police Station, Surat to Sabarkantha District and placed at the disposal of Superintendent of Police, Sabarkantha at Himmatnagar, amounts to deputation, because deputation is also a

transfer outside the cadre, and in no manner contrary to law or the provisions which have been relied upon.

10. We, therefore, deem it fit and proper to observe that under Rule 152, which provides for inter-district transfers in emergencies and the other Rule relating to transfer on the administrative grounds, in case of emergencies, it is desirable that the authorities should clarify as to how long the services of a Head Constable/Constable are required to meet with the exigencies at the transferred place, and as soon as the emergent administrative exigencies cease to exist at the transferred place, they must be sent back to their parent cadre. With these observations, the Letters Patent Appeal is disposed of accordingly with no order as to costs."

23. Hon'ble Division Bench has clearly observed that it is desirable that the authorities should state as to how long services of constable are required to meet with the exigency at the place of transfer and as soon as emergent administrative exigency is over at the place of transfer, they must be sent back to their parent cadre.

24. Therefore, as observed by the Hon'ble Division Bench in context of provisions of Section 28 of the Act read with Rule 152 of the Manual, the competent authority when decided to exercise powers under the above provisions, had to clearly provide as to how long services of the petitioners were required at the place of transfer even if such transfer was made in public interest. The transfer of the petitioners are not ordinary. They are made under Section 28(1) of the Act. Therefore, such transfers could never be on any other ground except for what is provided in Section 28(1) of the Act.

25. In the present case, the transfer of the petitioners was not to meet with any exigency or in public interest prevailed at transferred place but the same was only on account of hooch tragedy in connection with which the petitioners have been departmentally punished. Such grounds for transfer are not recognized, envisaged or intended by the legislature in the provisions of Section 28 of the Act read with Rule 152 of the Manual. When the transfer of the petitioners are made under statutory provision, even though the

public interest demanded or warranted taking of any action against the petitioners, the same would not weigh and permit the concerned authority to defy the statutory provision. Even apart from this, transfer of the petitioners could not have been either for unlimited period or for period of five years at a stretch. This very fact of providing no time limit in order of one of the petitioners and five years in the case of another petitioner would lend support to the case of the petitioners that their transfer was not for any requirement or reasons as provided in Section 28 of the Act.

26. It is required to be noted that in the case of petitioner in Special Civil Application No. 12765 of 2010, punishment of reduction in pay scale was imposed whereas in the case of petitioner in Special Civil Application No.3553 of 2011, punishment of stoppage of increment came to be imposed. Thus, departmental inquiry initiated against the petitioner was concluded and no further inquiry was pending against the petitioner. The respondents instead of stating as to how long services of the petitioners were required at the place of transfer filed affidavit-in-reply stating that the transfers were for five years. Under these circumstances, it clearly appears that the continuation of the petitioner at the place of transfer is without authority of law.

27. Learned Assistant Government Pleader Mr. Raval has relied on the decisions to point out that the transfer of an employee is an incident of service and could be made in public interest and for administrative reasons. However, in none of the cases, the Courts were faced with the question posed for consideration in these petitions. Similarly, the decision relied on by learned advocate for the petitioners since on different facts situation will have no application to the facts of the case. In the present case, this Court has examined the orders of transfer of the petitioners in context of the provisions of Section 28 of the Act read with Rule 152 of the Manual in exercise of which the respondent authorities have passed impugned orders of transfer of the petitioners. It may be that there were compelling

necessity in public interest to pass transfer orders against the petitioners with other police officers. In ordinary transfer in public interest or for administrative reasons, the Court may have limited judicial review. However, the scope of judicial review is widened when the transfer of police constable is made out of district in exercise of powers under Section 28 of the Act read with Rule 152 of the Manual, to examine whether such transfer is meeting the statutory requirement. The Court finds that the transfer orders since not satisfying the statutory provisions, cannot be permitted to be operated any further. Impugned orders of transfer are, therefore, required to be quashed and set aside.

28. For the reasons stated above, petitions are allowed. Impugned orders dated 26.10.2010 and 24.9.2010 are quashed and set aside. It is directed that the the impugned orders shall not operate against the petitioners henceforth. Rule is made absolute accordingly.

29. At this stage, learned Assistant Government Pleader Mr. Ronak Raval requests to suspend operation of this judgment and order for some time. Once the Court has taken a view that the impugned transfer orders cannot operate, the request made by the learned Assistant Government Pleader Mr. Raval cannot be accepted. Hence request made by learned AGP Mr. Raval is rejected.

Sd/-
(C.L. SONI, J.)

omkar/AN Vyas