

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 552 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

=====		
Approved for Reporting	Yes	No
		✓

=====

BHARATKUMAR GAJUJI THAKOR & ANR.
Versus
STATE OF GUJARAT & ORS.

=====

Appearance:

MR RB THAKOR(6743) for the Petitioner(s) No. 1,2
MS SUMAN J MOTLA AGP for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2,4
DS AFF.NOT FILED (N) for the Respondent(s) No. 3,5

=====

CORAM:HONOURABLE MR. JUSTICE NIRAL R. MEHTA**Date : 08/07/2026****ORAL JUDGMENT**

[1] By way of the present petition instituted under Article 226 of the Constitution of India, the petitioners have invoked the extraordinary writ jurisdiction of this Court, calling in question the legality and validity of the inter-district transfer order dated 3rd January 2024 passed by the Superintendent of Police, Banaskantha at Palanpur.

[2] Since the controversy involved in the present petition lies within a narrow compass and the issue is no longer *res integra*, at the request of the learned advocates appearing for the respective parties, the matter is taken up for final disposal at the admission stage.

[3] Rule. Learned Assistant Government Pleader, Ms. Suman Motla, waives service of notice of Rule on behalf of the respondent–State.

[4] The facts giving rise to the present petition are largely undisputed. The petitioners were serving as Head Constables in the District of Banaskantha. An F.I.R. came to be registered against them, pursuant to which departmental proceedings were initiated. Upon conclusion of the departmental inquiry, the petitioners were found guilty and were visited with the penalty of stoppage of one increment with cumulative effect for two years. The said punishment came to be affirmed in departmental appeal. It is, however, an admitted position that the petitioners were subsequently acquitted of the criminal charges by judgment and

order dated 29th May 2023 passed by the learned Additional Judicial Magistrate First Class, Deesa, in Criminal Case No.1253 of 2020. Thereafter, the impugned order directing their inter-district transfer came to be passed by the competent authority.

[5] Aggrieved by the aforesaid transfer order, the petitioners have approached this Court seeking its quashing and setting aside.

[6] Heard learned advocate Mr. R. B. Thakore appearing for the petitioners and learned Assistant Government Pleader Ms. Suman Motla appearing for the respondent–State.

[7] The principal contention canvassed on behalf of the petitioners is that the impugned transfer order, though purportedly passed in public interest, does not stipulate any definite tenure or specify the period for which such transfer is to remain operative. It is submitted that the impugned action is, therefore, contrary to the law laid down by the Coordinate Bench of this Court in **Hadamatsinh Naharsinh Sisodiya v. State of Gujarat and Others**

[Special Civil Application No.12765 of 2010 and allied matters, decided on 31st July 2013], which has been affirmed by the Division Bench in **State of Gujarat and Others v. Hadamatsinh Naharsinh Sisodiya [Letters Patent Appeal No.1400 of 2013 arising out of Special Civil Application No.12765 of 2010 and allied matters, decided on 1st July 2014]**. It is contended that whenever a transfer is effected in public interest, the order must necessarily indicate the duration for which such transfer is intended to operate. Since the impugned order admittedly does not prescribe any such period, it is urged that the same is liable to be quashed on this ground alone.

[8] On the aforesaid premises, learned advocate for the petitioners prayed that the present petition be allowed.

[9] *Per contra*, learned Assistant Government Pleader Ms. Suman Motla, while supporting the impugned order, advanced the following submissions:

[9.1] It is submitted that the impugned transfer order is purely an administrative measure passed by the competent

authority in exercise of its statutory powers, and therefore, no interference is warranted by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

[9.2] It is further submitted that following the publication of the news article dated 28th January 2024, the competent authority immediately initiated appropriate proceedings by issuing a notice with respect to the alleged misconduct. It is, therefore, contended that the impugned transfer cannot be said to have been effected either hastily or in violation of the principles of natural justice. On such premise, it is urged that the petition deserves to be dismissed.

[9.3] It is also submitted that the impugned transfer has been ordered in public interest and that, in view of Section 28 of the Bombay Police Act, the competent authority possesses ample power to transfer police personnel to any part of the State. The exercise of such power being administrative in character, it is contended that this Court ought not to interfere with the impugned order while exercising jurisdiction under Article 226 of the Constitution.

[10] On the strength of the aforesaid submissions, learned

Assistant Government Pleader prayed for dismissal of the present petition.

[11] The learned advocates appearing for the respective parties have been heard at length. The material placed on record has also been perused. No other or further submissions have been advanced by the learned advocates except those recorded hereinabove.

[12] Upon consideration of the rival submissions and the material available on record, it emerges that the impugned transfer order came to be passed on 3rd January 2024, subsequent to the acquittal of the petitioners by the competent Criminal Court. It is also an undisputed position that although the transfer order states that it has been issued in public interest, it does not prescribe any specific tenure or indicate the period for which the transfer is to remain operative. In view of these admitted facts, the ratio laid down by the Coordinate Bench of this Court in **Hadamatsinh Naharsinh Sisodiya (supra)**, as affirmed by the Division Bench in **State of Gujarat and Others v. Hadamatsinh Naharsinh Sisodiya**

(Letters Patent Appeal No.1400 of 2013 decided on 1st July 2014), squarely governs the controversy involved in the present case.

[13] Even at this stage, the decision of the Division Bench of this Court in the case of **Haroon Yusufbhai Kadiwala vs. Director General of Police and another** [Letters Patent Appeal No.2277 of 2010 in Special Civil Application No.3739 of 2010 decided on 17th February 2011] deserves consideration. The Division Bench of this Court in the case of **Haroon Yusufbhai Kadiwala (supra)** has held and observed in paragraphs Nos.7 to 10 as under:

“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.”

[14] In view of the aforesaid settled legal position, the impugned order dated 3rd January 2024 cannot be sustained in law. The reason being that, although the transfer has been purportedly effected in public interest, the impugned order does not prescribe any definite tenure or specify the period for which such transfer is to remain operative. Consequently, the petitioners have been transferred out of their parent district for an indefinite duration

under the guise of public interest. Such an order is plainly inconsistent with the law laid down by this Court in the aforesaid decisions and, therefore, cannot be countenanced. The petition, thus, merits acceptance.

[15] In view of the foregoing discussion and for the reasons recorded hereinabove, the present petition succeeds and is accordingly allowed. The impugned order dated 3rd January 2024 is hereby quashed and set aside. The respondents are directed to repatriate the petitioners to their parent cadre within a period of three months from the date of receipt of a copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs.

CHANDRESH

(NIRAL R. MEHTA,J)