

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14873 of 2022

An application under Articles 226 and 227 of the Constitution of India.

Minaketan Nayak and others ***Petitioners***

-versus-

State of Odisha and others ***Opposite Parties***

Appeared in this case:-

For Petitioners

Mr. B. Routray, S.K. Samal, S.D. Routray, J. Biswal, M. Panda, A.K. Das and M. Padhi.

For Opp. Parties

Mr. P.K. Rout, Learned Addl. Government Advocate

W.P.(C) Nos.14873, 13981, 15590, 17335, 15106, 16164, 16022, 15698, 14877, 15081, 15411, 15174, 16869, 17149, 17448, 18035, 18157, 18258, 18311, 18312, 18489, 18642, 18665, 19003, 19251, 19274, 19277, 19294, 19348, 19361, 19782, 19906, 20077, 20186, 20301, 20968, 21325, 21327, 21331, 21333, 21335, 21336, 21733, 21736, 21882, 22284, 22946, 23322, 23965, 23967, 23971, 23973 of 2022

CORAM:
JUSTICE A.K. MOHAPATRA

Date of hearing : 14.12.2022 | Date of Judgment: 24.02.2023

A.K. Mohapatra, J. :

1. The present writ application along with a batch of similar other writ application involving identical issue are taken up for hearing and the same are being disposed of by the following common order.
2. For the sake of brevity as well as convenience the facts involved in W.P.(C) No.14873 of 2022 (***Manik & others-v.-State of Odisha and others***) is being taken up for analysis of the facts involved in the batch of writ applications and accordingly the present writ application is treated as lead matter in the batch of cases.
3. The present writ application has been filed with a prayer to quash the impugned Police Circular Order (PCO) No.393 dated 21.05.2022 under Annexure-4 and the letter/order dated 10.06.2022 issued by Opposite Party No.4 under Annexure-7. In addition to the above prayer, the Petitioner has also made a further prayer for a direction to the Opposite Parties, more particularly, Opposite Party Nos. 2 & 3 not to act in terms of the impugned PCO No.393 dated 21.05.2022 under Annexure-4 and to allow the Petitioner to continue as Constable as before without insisting on undergoing training or

assigning any investigation work as has been directed by the authorities by the impugned order under Annexure-4.

4. The factual matrix involved in the present writ application as well as in the batch of other writ application in a narrow compass is that the Petitioner along with other similarly situated persons were selected as Constables by following a fair and transparent selection procedure pursuant to an advertisement issued by Opposite Party No.1 on different occasions and keeping in view the eligibility requirements under the advertisement like the educational qualification, age etc. After their selection they were appointed as Constables on different dates at different places in the State of Odisha.

5. When the Petitioners were discharged their duties as Police Constables under different Police Stations in the State of Orissa, the Opposite Party No.1 vide its Resolution No.358 dated 03.01.2019 directed the Opposite Party Nos. 2 & 3 regarding conferment of power of investigation on Graduate Constables and Crime Intelligence Havildar. In the aforesaid Resolution, it was also stipulated that such Graduate Constables and Crime Intelligence Havildar would be provided institutional training in any recognized institutions for 30 days. On different aspects of investigation which will be followed by

a practical training in Police Stations for further period of 45 days and thereafter an examination would be conducted on successful completion of the training. On successful completion of training and subject to passing in the examination, such Graduate Constables and Crime Intelligence Havildars would be conferred with power of investigation on ad hoc basis. The aforesaid Resolution has also clarified that the Graduate Constables and Crime Intelligence Havildar shall not be entitled for any financial/service benefit on account of such delegation of power of investigation.

6. Pursuant to the aforesaid Government Resolution No.358(D) dated 03.01.2019, the Opposite Party No.2 i.e. D.G. & I.G. of Police, Odisha vide Police Circular Order No.381 of 2019 intimated that **willing Graduate Constables & Crime Intelligence Havildar** will undergo a period of basic training as has been provided in the Government Resolution at different Training Institutes for development and refining their skill in the field of investigation. After successful completion of institutional training and practical training in different Police Stations and subject to their qualifying in the examination by securing qualifying marks, the BPSPA would publish the final result. The Trainees, who would successfully completing the

training shall be conferred with power of investigation under section 157 Cr.P.C. by the Superintendent of Police H.Qrs.

7. Clause-2 of the aforesaid Police Circular Order No.381 of 2019 provides that since it is only for willing Graduate Constables and Crime Intelligence Havildar, the minimum qualifying service period has been kept as five years of completed service and it has also been provided that upon conferment of power of investigation on selected Graduate Constables and Crime Intelligence Havildars, they shall not be entitled for any financial or service benefits merely because they would be required to attend in the work of investigation.

8. It is relevant to mention here that under Rule 66(a) of the PMR Rules, it has been provided that the Matriculate Constables are entitled for promotion to the post of ASI, who has seven years of service experience subject to their qualifying in the training for a period of four months. Such training would include one month institutional basic training at the designated training institution and three months practical training in Police Station and further they shall also be required to pass the final examination to be conducted by the authorities. It may not be out of place to mention here that in the State of Odisha, the last

advertisement for promotion of Havildar to the post of A.S.I. was held in the year 2019 and the present Petitioner, who is the Graduate Constable had applied for promotion, but unfortunately, he could not be selected for promotion to the post of ASI. The power of investigation as has been provided under Section 157 Cr.P.C and under Rule 660(c) of PMR Rules lies with the A.S.I. However, the Opposite Party No.1 vide its Resolution, for the first time, intended to confer such power of investigation in the Graduate Constables which is basically a job of an officer i.e. a promotional post for the Constables.

9. On 18.05.2022 the Opposite Party No.3 issued a letter to Additional D.G. of Police, Training and Director, BPSPA requesting them to send the joining instruction and training calendar and instruction to District Superintendent of Police to intimate the eligible Constables for training by giving due weightage to the seniority of BRS candidates. The Opposite Party No.3, i.e. the D.G. of Police, Odisha without taking any prior approval from the Home department, Government of Odisha and other competent authority in supersession of PCO Order No.381 of 2019 issued the present PCO dated 21.05.2022 and change the eligibility, training and other modalities

including the willingness of Graduate Constables to undergo such training.

10. Additionally, the Home Department, Government of Odisha vide its Resolution dated 358 dated 03.01.2019 and the Opposite Party No.2 vide Police Circular Order No.381 of 2019 fixed the minimum qualifying service and syllabus for such Graduate Constables and Crime Intelligence Havildar for conferring upon them the power of investigation which otherwise lies with the Officers designated by the Government under Section 157 Cr.P.C. Moreover, the Opposite Party No.3 issued the impugned PCO No.393 dated 21.05.2022 in supersession of earlier PCO issued by the Office of Opposite Party No.3. Therefore, it has been pleaded in the writ petition that the later PCO No.393 dated 21.05.2022 issued by Opposite Party No.3 is in contravention of PCO No.381 of 2019 which was issued with the concurrence of the State Government. As such, the same is contrary to the Police Act, 1861 and the PMR Rule and therefore the same is unsustainable in law. Challenging such impugned PCO dated 21.05.2022 the present writ application has been filed.

11. Heard Mr. B. Routry, learned senior Advocate for the Petitioner and Mr. P.K. Rout, learned Additional Government advocate for the State-Opposite Parties. Perused the pleadings of the Opposite Parties as well as the documents annexed thereto and relied upon by the learned counsel appearing for the respective parties.

12. Mr. Routry, learned senior counsel appearing for the Petitioner at the outset submitted that Graduate Constables and Crime Intelligence Havildar can also investigate criminal cases if the Officer-in-Charge of the Police Station deputes them for such purpose, however, they will not be entitled for any financial/service benefits as has been decided by the Home Department, Government of Odisha vide its Office Order No.345 dated 03.01.2019. After passing of the Office Order No.345 dated 03.01.2019, the Home department, Government of Odisha omitted Rule 158 of Odisha Police Rule. Again, on the very same day i.e. on 03.01.2019 a Resolution No.358 was issued by the Government enlisting the Act and Offences under the Indian Penal Code in respect of which the investigation could be done by the Graduate Constables and Crime Intelligence Havildar.

13. It is also contended by Mr.Routray, learned senior counsel that the I.G. of Police wrote a letter to the Additional D.G. of Police Training and Director of BPSPA enclosing therewith number of Graduate Constables of various districts and requested him to conduct the training programme and further he was also requested to send joining instruction and training calendar to nominate eligible constables for training by giving due weightage to their seniority under intimation to the Office of the I.G. Thereafter on 21.05.2022 the Opposite Party no.3 issued Police Circular Order No.393 dated 21.05.2022 laying down the eligibility criteria and the syllabus for training for Graduate Constable and Crime Intelligence Havildar. Challenging the said Police Circular Order dated 21.05.2022, the present writ application has been filed.

14. Mr. Routray, learned senior counsel assailed PCO No.393 dated 21.05.2022 on three major grounds. Firstly, the PCO has been issued without concurrence of the State Government and the Home Department, secondly, the willingness of the candidates which was their earlier has been obliterated under the new PCO and thirdly although the GC and CIH would be required to do the investigation work by conferring upon them the power of investigation. They have not

been given any additional financial/service benefit. Accordingly, learned senior Counsel appearing for the Petitioner contends that the PCO dated 21.05.2022 is unsustainable in law inasmuch as the same is not reasonable, discriminatory and arbitrary in nature.

15. On perusal of records, this Court observes that on 10.06.2022 the D.G. & I.G. of Police, Odisha issued a letter to all the Superintendent of Police in the State wherein it was directed to impart in-service training course with GC and CIH on investigation skill for a duration of 30 working days with 45 days of practical training which would start from 30.06.2022. This Court by virtue of an interim order has stayed the operation of letter dated 10.06.2022 and such interim order is still in force.

16. In course of argument, the attention of this Court was drawn to Section 157 Cr.P.C. and Police Act 1861 and the P.M.R. Rules. In the context of power of investigation has not been conferred on Graduate Constables and Crime Intelligence Havildar. It is submitted by the learned counsel for the Petitioners in the batch of writ application that in view of Section 157 Cr.P.C. the power of investigation has been

conferred upon the A.S.I. of Police and further it was submitted that the post of A.S.I. of Police is a promotional post of Constable.

17. Next, it is contended by the learned counsel appearing for the Petitioners in the batch of matters led by Mr.Routray, learned senior counsel that although the Home department, Government of Odisha, Opposite Party No.1 issued the Resolution and conferred with power of investigation on the Constables subject to their qualifying in the examination to be conducted by the Police department, such a Resolution is in conflict with Section 157 Cr.P.C. and as such the same is unsustainable in law. It is further contended that without designating the Petitioner and similarly situated other GC and CIH as subordinate officers, the Government could not have conferred power of investigation on them that too without any financial and service benefit. It was also argued that the conduct of the Opposite Parties in the present case by conferring additional burden without any financial and service benefit tantamount to exploitation of Police force.

18. The attention of this Court was also drawn to Rule 8(a) of PMR Rules whereunder the duty of the Inspector General

has been clearly delineated and for better understanding the same has been quoted herein below.

“8(a) The Inspector General-the Administration of Police through the General Police district of Orissa is invested in the Inspector General, who is responsible to Government. Besides the power given to him by Section 12 of the Act V of 1861, he is authorized without reference to Government, to issue circular orders on matters of routine or in order to simply and explain previous orders, provided that on circular dealing with a point of law shall be issued until proved by the Legal Remembrance”

By referring to the aforesaid Rule, learned counsel appearing for the Petitioner submitted that apart from the Police Administration and the routine nature of work, any other issue including Rules on the point of law cannot be framed by the Inspector General without reference to the Government and further any other issue involving any point of law as has been referred to in Rule 8(a) of PMR Rule has to be proved by the Government as provided under section 12 of the Police Act, 1861. In this context learned counsel for the Petitioner also refers to Section 12 of the Police Act which has been quoted herein below.

12. Power of Inspector General to make Rule-The Inspector general of Police may, from time to time to the approval of the State Government frame such orders and Rules as it shall deem expedient relating to the organization, classification and distribution of Police Force, the

placed members of the force shall reside and particular services to be performed by the approval from the State Government.” counsel for the Petitioner.

19. Referring to the provisions contained in the aforesaid Section 12 of the Police Act 1861 learned counsel appearing for the Petitioner submitted that the impugned order i.e. PCO dated 21.05.2022 has been issued by the Director General of Police, Opposite Party No.3 without taking any prior approval from the Government. Therefore, the same is hit by Section 12 of the Police Act and as such unsustainable in law. It is further contended that the D.G. of Police is devoid of any power to issue a PCO in supersession of the earlier PCO issued by the D.G & I.G. of Police (Opposite Party No.2) without taking prior approval from the Government.

20. In the context of willingness of the candidates to undergo the training as has been proposed by the Government and the PCO, it is submitted by the learned counsel for the Petitioners that the Superintendent of Police of some districts like Nawarangpur, Cuttack and Keonjhar and many other districts have suggested names of willing GC & CIH to undergo such training after obtaining their consent. Referring to some of the letters issued by the Superintendent of Police of

different districts, learned counsel for the Petitioner submitted that such letter revels that willingness of the GC & CIH was first sought for to undergo such training for the purpose of conferring upon them the power of investigation. Therefore, it is submitted that it is only willingness of GC&CIH who were sent for training as has been prescribed in the PCO dated 21.05.2022. It was also argued that different districts are adopting different standards in the State of Odisha i.e. while some districts are seeking for willingness to undergo such training. At the same time, some of the districts are compelling the GC & CIH to undergo such training against their will and consent. Therefore, it is argued that such conduct of the Opposite Parties amounts to creation of a class within the same class which is hit by the underlining principle of Article 14 of the Constitution of India.

21. Learned counsel for the Petitioner further informs this Court that the proposed training of Graduate Constable and Crime Intelligence Havildar for a duration of 30 working days with 45 days practical training for the first batch which are supposed to start from 20.06.2022. It was decided by the Opposite Parties that a total number of 261 Constables were deputed for training for the first batch. Learned counsel for the

Petitioners expresses that since some of the Petitioners were appointed in 1990, considering their seniority, it is most likely that the Petitioners would be compelled to undergo such training against their will and consent. It is also argued that the same is not the case in respect of Keonjhar and Nawarangpur district where the willingness of the GC & CIH have specifically obtained before finalizing the names of candidates who would undergo training. Thus, it is argued that such conduct of asking for consent in some cases and compelling the candidates in other district is highly discriminatory and as such violates Articles 14 and 16 of the Constitution of India. It was also brought to the notice of this Court that a large number of post of ASI of Police are still lying vacant in the State of Odisha. However, due to inaction of the Opposite Parties such posts are not being filled up, thereby depriving some of the Petitioners the opportunity to get promotion to the rank of ASI. It was also argued that without giving promotion to the post of ASI (which is a subordinate officer post), the Petitioners are being burdened with additional responsibility of investigation without providing the financial and service benefits which is attached to the post of ASI.

22. (23)A counter affidavit has been filed on behalf of the Opposite Party Nos.1 to 3. In the said counter affidavit, at the outset, it has been stated that the writ petition is not maintainable on facts as well as law. Further, it has been stated in the counter affidavit that pursuant to Section 157 of the Cr.P.C., the Government of Odisha, Home Department vide Order No.345/D&A dated 03.01.2019 has prescribed that qualified Graduate Constables and Criminal Intelligence Havildars as the case may be deputed by the Officer-in-Charge of a Police Station to proceed to the spot to investigate the facts and circumstances of the case in petty offences and if necessary, to take measure to recovery and arrest of the offender. It has also been stated that power of investigation of cognizable offences are being conducted by the Officers in the rank of Inspectors, Sub-Inspectors and Assistant Sub-Inspectors whereas DSP having supervisory power conducts investigation of cases under the S.C. & S.T.(PoA) Act, UPA Act and other important cases. Since a number of cognizable cases are increasing in the State of Odisha and such cases are being registered at different Police Stations of the State, as a result of which, the work burden on the Investigating Officers has increased drastically and further the same also requires proper assistance by the competent police

personnel. Such officers besides performing multiple duties like law and order, intelligence collection, traffic duty, VIP duties etc. are also required to take up the investigation work.

23. In the counter affidavit, it has also been stated that for proper investigation, adequate number of officers are required and accordingly sanctioned strength of officers has to be enhanced by following the due recruitment process. However, to tackle the situation, it was decided by the Government that the power of investigation in certain categories of cognizable cases could be conferred and Criminal Intelligence Havildars (in short 'the C.I. Havildars') as is being followed in the State of Andhra Pradesh, Telengana, Tamil Nadu, Kerala, Maharashtra, Punjab, Madhya Pradesh and Delhi. It has also been avoided in States like Delhi and Kerala, job has been entrusted to constables. The decision to confer of power of investigation on Constables and the C.I. Havildars would define supplement Investigating Officers to a large extent thereby facilitating a much more and efficient investigation with all promptitude. Entrustment of investigation of petty offences like under Sections 294, 323, 341, 337, 338, 447 and 506, I.P.C. would reduce the burden of work of the

Investigating Officer and hence, they can divert more quality time in investigation of involving major offences.

24. To justify the decision taken by the Government in the counter affidavit a statistical picture of Odisha Police has already been broader. It has been stated that strength of Odisha Police is about 72,145 which includes around 55,000 Constables. Out of which, 8,000 Constables have been deployed in all 612 Police Stations across the State. Said Constables are mainly used for station watch duty, escorting duty, handing of daks/files, assisting senior officers during investigation. Since many of the Constables employed are Graduates Constables having expert in computer skill, Government of Odisha took a decision to engage such Graduate Constables, who are otherwise qualified to take up the job of investigation, in investigating cases involving in petty offences thereby reduce the work burden of the Investigating officers. This is more so as Odisha Police is running with shortage of Investigating officers. Therefore, taking into consideration the proposal submitted by the State Police Headquarters and after a careful examination of the proposal, the State Government has taken decision to reform the Odisha Police by exercising power conferred under Section 157 of the Cr.P.C. and accordingly, the

Resolution No.358/D&A dated 03.01.2019 has been issued empowering the Graduate Constables and C.I. Havildars to take up investigation, in cases involving petty offences, which have been specifically mentioned in the resolution. Further, it has been made clear that offences involving punishment more than three years, IIC/OIC shall take over the investigation either himself or shall transfer investigation to any other officer empowered for investigating such offences.

25. In view of the aforesaid logic, the Government of Odisha by invoking power under Section 157 of the Cr.P.C. has issued Resolution dated 03.01.2019 and thereby it has been prescribed that petty offences, which are punishable up to three years may be investigated by Graduate Constables or C.I. Havildars. Further in order to have proper control and supervision over the investigation, the OIC, IIC of the concerned Police Stations have been authorized to supervise the investigation conducted by the Graduate Constables and C.I. Havildars. Before undertaking investigation under the resolution dated 03.01.2019, the Graduate Constables and C.I. Havildars would be provided institutional training in the Police Training Institute for 30 days and different aspects of investigation followed by practical training in Police

Stations for a further period of 45 days. Thereafter, an examination shall be conducted on completion of the training and upon successful passing out the examination, Graduate Constables and C.I. Havildars shall be conferred with power of investigation. At present 33 sections, the investigations are being conducted by the (Assistant Sub-Inspector 'ASIs'). Henceforth, the Investigation in such cases shall be handed over to the trained Graduate Constables and C.I. Havildars and accordingly, the services of ASIs can be better utilized in investigating into other important cases.

26. In the counter affidavit, it has also been pleaded that the aforesaid decision of the Government would help in prompt and quality investigation of cases with clearance of massive backlog at police station level and this process would also help in increasing the rate of conviction for effective implementation of the order, modalities have been drawn to select the capable Constables and Havildars for the investigation work and they will also be trained in all aspects of investigation starting from registration of F.I.R. to submission of Final Form. It has also been stated that upon completion of successful training and after successful passing out the examination, the Graduate Constables and C.I. Havildars will

be conferred with power to investigate under Section 157 of the Cr.P.C. The earlier circular dated 25.07.2019 has also been partially modified by Police Circular Order No.393 dated 21.05.2022.

27. Accordingly vide Police Circular Order No.393 of 2022, Biju Patnaik State Police Academy (BPSPA), Odisha was requested to conduct the training programme as per the approved syllabus vide letter dated 18.05.2022 and all Police Districts were requested to short-list and depute eligible Graduate Constables strictly giving due weightage to their seniority and other criteria as per PCO No.393 dated 21.05.2022. The training of first batch of Constables has already been commenced w.e.f. 20.06.2022. An examination is likely to be conducted very soon after successful completion of training programme.

28. To facilitate the confirmation of power of investigation of Graduate Constables and C.I. Havildars, Rule 58 of the Odisha Police Rules, has been suitably amended / omitted in exercise of power under Section 46 of the Police Act and the Resolution No.358/D&A dated 03.01.2019 has been notified laying down certain guidelines for conferring the power of investigation upon Graduate Constables and C.I. Havildars to conduct the

investigation. Further the Order No.345 / D&A dated 03.01.2019 has been issued by Government of Odisha in exercise of powers conferred by Section 157 of the Cr.P.C. pursuant to Resolution No.358 / D&A dated 03.01.2019, Police Circular Order No.381/2019 by the Director General of Police and Inspector General of Police, Odisha, Cuttack dated 25.07.2019. Further, the Inspector General of Police(Personnel), Odisha issued a letter dated 18.05.2022 to the Additional Director General of Police, Training and Director of BPSPA Odisha requesting him to conduct the training programme as per the approved syllabus. The Director General of Police, Odisha, Cuttack in supervision of Police circular Order No.381/2019 issued Police Circular Order No.393 dated 21.05.2022 thereunder prescribing eligibility, training and other modalities to be followed. Therefore, it is submitted by learned counsel for the State that the same is neither illegal nor arbitrary and in violation of Articles 14 and 26 of the Constitution of India.

29. With regard to willingness sought for by the Superintendent of Nabarangpur, it has been stated in the counter affidavit that such willingness might have been sought for pursuant to Police Circular Order No.381 of 2019, however, the

same has been superseded by Police Circular Order No.393 dated 21.05.2022. As such, the requirement of sending willingness is no more in force. As such, no certain willingness by some of the Superintendents of Police in respect of some other districts does not in any manner amount to discrimination as the same has not been acted upon or given effect to.

30. It is submitted by learned counsel for the State that by referring to Rule-660(a) of Odisha Police Rules, which speaks about the appointment of Assistant Sub-Inspectors and as per the said rules constable may be allowed to officiate A.S.I. after seven years of service as per the procedure laid down with due regard to the vacancy of position, seniority, suitability after being successful in the written examination whereas as per eligibility criteria as mentioned in the Police Circular Order No.393 dated 21.05.2022, Graduate Constables and Crime Intelligence Havildars, who have completed qualifying service of minimum 4 years as on 1st January of the year are eligible for training and other modalities to undertake investigation after the training.

31. It was also submitted by learned counsel for the State that at present the Inspector, Sub-Inspector and Assistant Sub-Inspectors of Odisha Police are performing the multifarious duties

besides conducting investigation in all types of cognizable offences. Therefore, such officers are burden with work leading to huge backlog of cases under investigation at different Police Stations of the State. Such, pendency of cases persuaded the Government of Odisha to take a decision and notify Resolution No.358 / D&A dated 03.01.2019 and as such, it was decided to confer the power of investigation of certain selected Graduate Constables and C.I. Havildars subject to their eligibility, suitability and seniority.

32. So far under Section 157 of the Cr.P.C. is concerned, the learned Additional Government Advocate would argue that in view of such provisions in Cr.P.C., the Government can prescribe any police personnel for investigation and accordingly, no fault can be found with the Government in taking a decision to confer the power of investigation to Graduate Constables and C.I. Havildars by passing Resolution No.358 dated 03.01.2019 thereby permitting to investigate them in petty offences where the period of punishment is up to three years. Further, referring to Rule-660(a) of the Orissa Police Rules, it was also submitted that the next promotional posts of the Graduate Constables and C.I. Havildars i.e. after completion of seven years of qualifying

service they will be eligible for promotion to the next higher rank i.e. A.S.I. Therefore, it was argued that since the Government is providing training to the Graduate Constables and C.I. Havildars and in the process, preparing them for the next promotional posts, no financial benefits or service benefits has been allowed for such institutional training.

33. With regard to willingness for training, it was submitted by learned Additional Government Advocate that seeking willingness from the said Graduate Constables and C.I. Havildars is no more requirement of law in view of the police circular order no.381 of 2019 dated 25.07.2019 as the same has been superseded by the police circular order No.393 dated 21.05.2022. Accordingly, it was further submitted that the question of seeking willingness of some Graduate Constables and C.I. Havildars in respect of some districts having not given their specific willingness is no more available for consideration in view of the latest Police Circular dated 21.05.2022. He would also argue with empowered Graduate Constables and C.I. Havildars with the power of investigation is a step in the right direction to facilitate prompt and quality investigation of petty offences having prescribed punishment up to three years.

34. Having heard rival contentions raised by learned counsels appearing for the respective parties, and upon a careful conspectus of the factual background, this Court is of the prima facie view that management supervision and deployment of police force comes within the sole domain of the Home Department, Government of Odisha as well as State Police Administration. In such view of the matter, the intervention of this Court is not desirable so far training and deployment of police personnel are concerned, more so, when an attempt is being made, although a bit made, to reduce the huge pendency of cases under investigation at different Police Station level. Therefore, this Court would never consider the matter had it been a case of simple police force management, deployment/re-deployment of forces or re-casting the duties of police personnel, they are required to do in course of their service. However, keeping in view the complex nature of problem and the additional duty that is being delegated to the Graduate Constables and C.I. Havildars, which they are not performing earlier, this Court deems it proper to analyze the factual scenario as well as legal position and the financial issue.

35. So far the legal issue involved in the present case is concerned, this Court is required to deal with Section 156 of the Cr.P.C. which provides the procedure for investigation and Section 156 of the Cr.P.C. both provisions have been extracted herein below:-

“156. Police officer' s power to investigate cognizable case (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

36. Upon a careful reading of Section 156 of the Cr.P.C., it appears that the same specifically provides for Police Offices power to investigate cognizable cases. Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII. Therefore, such a provision clearly reveals that cognizable cases

can only be investigated by police officer and when the order of a Magistrate Sub-section (3) of Section 156 provides that a Magistrate is also competent and is empowered under Section 190 may also order such an investigation as provided under Sub-section(1) of Section 156 of the Cr.P.C. Therefore, Police Officer authorized for the purpose can only investigate into cognizable cases and none- else.

37. In a case of ***Rasiklal Dalpatram Thakur vrs. State of Gujarat*** : reported in AIR 2010 SC 715, Hon'ble Supreme Court held that it is not within the jurisdiction of the Investigating Agency to refrain itself to hold proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction and that the power vested in the Investigating Agency under this Section does not restrict the jurisdiction of the agency to investigate into a complete even if we do not have any territorial jurisdiction to do so. In the case of ***Naresh Kavarchand Khatri vrs. State of Gujarat***: reported in **(2008) 8 SCC 300**, Hon'ble Supreme Court has also observed that Cr.P.C. conferred power on the statutory authorities to direct transfer of investigation from one Police Station to another, in the event it is found that did not have any

jurisdiction in the matter and that the Court should be interfered in the matter at an initial stage in regard thereto. Further, it was held that if it is found that the investigation has been conducted by an Investigating Officer, who do not have territorial jurisdiction in the matter, the same should be transferred by him to the Police Station having requisite jurisdiction.

“157. Procedure for investigation.—(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-

section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

On a careful reading of Section 157 (1) Cr.P.C., this Court observes that the Officer-in-Charge of a Police Station has been conferred with power to investigate pursuant to a complaint lodged under section 156 Cr.P.C. and such Officer shall forthwith send a report to a magistrate empowered to take cognizance of such offence upon a Police report and the Officer-in-Charge shall proceed in person, or shall depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribed in this behalf, to proceed to the spot to investigate the facts and circumstances of the case and if necessary shall also take measure for discovery and arrest of the offender. Therefore, the power of investigation under section 157 Cr.P.C. has been clearly conferred upon the Officer-in-Charge of the Police Station who may depute one of his subordinate officers (not Havildar or Constable) for the purpose of such investigation. However, in the present case even if it is accepted that GC and CIH are given training as has been prescribed in the Government Resolution as well as PCO dated 21.05.2022, they

cannot be termed as Officers as has been prescribed under section 157 Cr.P.C. Therefore, it is argued by the learned counsel appearing for the Petitioner that unless, the trained GCs and CIH are designated as Officers by the State Government they cannot conduct the investigation directly as has been intended in the Government Resolution as well as the PCO dated 21.05.2022. Furthermore, in the event the GCs and CIHs are to be used in the investigation of cases, they are to be designated as subordinate officers and to be notified as such by the State Government by a general or special order. In such view of the matter, learned counsel appearing for the Petitioner took a common stand that if the GC and CIH are to be conferred with power of investigation then they are to be promoted to the rank of subordinate officer i.e. A.S.I., which is the promotional post in the present case or any other post of officer by amending the Rules suitably.

38. The provisions contained in Section 157, Cr.P.C. provides for the procedure for investigation. It also provides that where an Officer in-Charge of a Police Station has reason to suspect the commission of an offence which he is empowered under Section 156 of the Cr.P.C. to investigate, he shall forthwith send a report for the same to a Magistrate empowered to take cognizance of

such offences upon a police report and shall proceed in person or shall depute one of his Sub-ordinate Officer not below such rank as a State Government may, by general or special order prescribed in this behalf, to proceed, to the spot, to investigate the facts and the circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. Further proviso (a) of Section 157 (1) also provides when information as to commission of an offence is given any person by name and the case is not of a serious nature, the Officer in-Charge of a Police Station may not proceed in person or depute a Sub-ordinate Officer to make an investigation on the spot. Therefore the language employed in Section 157 of the Cr.P.C. is very clear and the intention of the legislature in framing Section 157 of the Cr.P.C. would very well be gathered from the language employed in Section 157 of the Cr.P.C. Section 157(1) of the Cr.P.C. clearly provides that the Officer-in-Charge of a Police Station shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his Sub-ordinate Officer not below such rank as the State Government may by general or special order prescribed in this behalf. Therefore, on a plain reading of Section 157(a), it is very clear that the Officer-in-Charge of the Police

Station is to investigate into the case himself and submit police report or he shall depute a Sub-ordinate Officer not being below such rank as the State Government may prescribe. This means either Officer-in-Charge or any one of the Officer available at the Police Station not below the rank of any officer prescribed by the State Government can investigate and submit a report to the Magistrate.

39. Proviso(a) to Section 157(1) also makes it abundantly clear that where the case is not a case of serious nature, the Officer-in-Charge of the Police Station need not proceed in person or depute Sub-ordinate Officer to make an investigation on the spot. Thus, in a case involving allegation of not serious nature, the Officer-in-Charge of the Police Station need not make investigation on the spot or need not even depute a Subordinate Officer to investigate at the spot. As such, investigation involving cases of non-serious nature need not be investigate by any Officer by going to the spot. Thus, a plain reading of Section 157(a) of the Cr.P.C., makes it amply clear that a duty is caste upon the Investigating Officer, who is a designated Police Officer, to forthwith send the report of the cognizable offences to the concerned Magistrate.

40. In such view of the matter, this Court by no stretch of imagination could presume that the legislatures while enacting Sections 156 and 157 of the Cr.P.C. were not aware of the meaning of the word "Officer". Furthermore, while providing that the cases are to be investigated by the Officer-in-Charge of the Police Station, it has also been provided that in course of investigation the OIC / IIC cannot send a person to the spot for investigation who is below the rank of an Officer as has been prescribed by the State Government in this behalf. In view of the language employed in the aforesaid two Sections, this Court has no hesitation in holding that the cases are to be investigated and the police report is required to be submitted to the Magistrate by the Police Officer, their designation may vary depending upon the notification.

41. At this juncture, it would be pertinent to refer to definitions as provided under Section 2 of the Code of Criminal Procedure, 1973. Although the word 'officer' has not been defined in the Cr.P.C., the words "officer-in-charge of a Police Station" has been defined in Section 2(o) of Cr.P.C. which has been extracted herein below:-

"(o) " officer in charge of a police station" includes, when the officer in charge of the police

station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station- house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;”

A close scrutiny of the aforesaid provision in Cr.P.C. makes it abundantly clear that any officer above the rank of constable can act as an officer-in-charge of a Police Station when the regular officer-in-charge is absent from the station house. Therefore, the post of constable can never be equated with the post of officer of whatsoever designation. In such view of the matter, this Court has no hesitation to come to a conclusion that either the Graduate Constables or Crime Investigation Havildars can never be equated with an officer in the police department. Moreover, to carry out the duties which have been assigned to them by virtue of impugned circular and as has been provided under Sections 156 and 157, Cr.P.C., the Graduate Constables as well as Crime Investigation Havildars are to be first designated as officer for the purpose of Sections 156 and 157, Cr.P.C. by either promoting them to the existing post of officers by creating new posts of junior officer in the cadre. Further, it is needless to mention that such promotion to the post of officer or any other designation from the post of G.Cs. and C.I. Havildars would also

accompany with it and enhancement in their remuneration either by fixing a higher scale of pay or by providing them some allowance/increment. This is more so, once such employees are upgraded from G.Cs. and C.I. Havildar to the rank of officers, they will be required to perform duties with enhanced responsibility.

42. In view of the aforesaid analysis of law as well as factual background of the present case, this Court has no hesitation in coming to the conclusion that the Police circular Order No.393 dated 21.05.2022 conferring power of investigation on constables and C.I. Havildars is unsustainable in law. Therefore, the same is hereby quashed. Further, letter dated 10.06.2022 under Annexure-7 written by the IG of Police Training, BPSPA, Odisha to All District Superintendent of Police requesting them to send Graduate Constables and C.I. Havildars for in-service training pursuant to PCO No.393 dated 21.05.2022 is also unsustainable in law in view of the fact that PCO No.393 dated 21.05.2022 has been quashed by this Court. Accordingly, the said letter dated 10.06.2022 under Annexure-7 is also hereby quashed.

Before parting this Court would like to observe that keeping in view the rise in number of cases, awaiting

investigation and further taking into consideration the public interest involved, this Court is of the view that the Home Department, Government of Odisha shall do well to consider the whole issue afresh and after due deliberation bring a fresh police circular order in consonance with Sections 156 and 157, Cr.P.C. as well as the Police Act and Manual and till such time, the earlier Police Circular Order shall remain operative.

43. In the result, the writ petitions stand allowed. However, in the facts and circumstances, there shall no order as to cost.

*Orissa High Court, Cuttack
The 24th of January, 2023/RKS&Jagabandhu.*

(A.K. Mohapatra)
Judge

