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**(2009) 04 AHC CK 0325**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No.24910 of 2006

Constable 88 C.P.Lal Babu Shukla & Ors.

APPELLANT

Vs

State of Uttar Pradesh & Ors.

RESPONDENT

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**Date of Decision :** 08-04-2009

**Acts Referred:**

**Citation :** (2009) 04 AHC CK 0325

**Hon'ble Judges :** Dilip Gupta, J

**Final Decision :** Allowed

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## **Judgement**

Dilip Gupta, J.

The sole grievance raised in the present petition is as to whether the period spent on training prior to appointment as a Constable in the Police Department can be counted for granting them promotional pay scale.

The petitioners were appointed as Constables in the Civil Police on 16th August, 1981 after undergoing training. The Government Order dated 3rd September, 2001 provides that such persons who have completed 24 years of regular and satisfactory service shall be entitled to get promotional pay scale of Rs.55001759000/.

The dispute, as noticed hereinabove, in the present petition is as to whether the period spent by the petitioners while undergoing the training prior to their appointment can be counted for the purposes of calculating the period of 24 years. For the said relief the petitioners had earlier filed Writ Petition No.75240 of 2005 which was disposed of with a direction to the Superintendent of Police, Chitrakoot to decide the representation filed by the petitioner on 17th November, 2005 by a reasoned and speaking order preferably within six weeks.

The Superintendent of Police by a communication dated 3rd February, 2006 sought clarification from the Deputy Inspector General of Police (Establishment), U.P. Police Headquarters, Allahabad as to whether the training period could be

counted. By the communication dated 22nd March, 2006 the Superintendent of Police, Chitrakoot was informed by the Deputy Inspector General of Police that in this regard necessary instructions had earlier been issued by the U.P. Police Headquarters on 8th November, 1965 and a copy of this was also enclosed. The Superintendent of Police was, therefore, directed to decide the matter in accordance with the said circular. The Superintendent of Police, Chitrakoot, thereafter brought the aforesaid communication dated 22nd March, 2006 to the notice of the petitioners by his communication dated 3rd April, 2006.

In the counter affidavit the respondents have brought on record the communication dated 11th May, 2006 sent by the Superintendent of Police, Chitrakoot informing the petitioners that in terms of the circular dated 8th November, 1965 issued by the U.P. Police Headquarters, the training period cannot be counted for the purposes of granting second promotional pay scale.

Sri K.K. Mishra, learned counsel appearing for the petitioners submitted that in terms of the circular dated 8th November, 1965, the training period is required to be counted for the purposes of granting the second promotional pay scale and, therefore, the Superintendent of Police, Chitrakoot was not justified in rejecting the claim of the petitioners.

Learned Standing Counsel appearing for the respondents, however, submitted that under the circular dated 8th November, 1965, the training period can be counted only for grant of pension and not for any other benefits. He has also placed reliance upon Clause 2(2) of the note dated 28th March, 2007 of the Financial Controller, U.P. Police Headquarters, Allahabad.

I have carefully considered the submissions advanced by the learned counsel for the parties.

The dispute in the present petition centres around the interpretation of the circular dated 8th November, 1965. The said circular has been issued by the U.P. Police Headquarters to all the Superintendent of Police, Deputy Superintendent of Police and Section Officers regarding counting of training period of recruits towards the leave, increment and pension and the relevant portion is as follows:

"Due to the introduction of fixed pay of Rs.165/ p.m. to recruits during the training period there is some misunderstanding regarding recording of the date of enlistment and counting of service etc. In this connection the following instructions are issued for guidance of all concerned:

i) LEAVE From the date of enlistment the recruits are to be treated as temporary Government servants and as such the leave rules applicable to the temporary Government servants will also apply to them.

ii) INCREMENT So long as the recruits remain under training and draw fixed pay of Rs.165/ p.m., the question of increment does not arise. They will draw their usual increments when they will be absorbed as constable in the time scale of pay.

iii) PENSION Since fixed pay is sanctioned to the recruits for the training period, they will be considered to have been appointed in service from the date they undergo training. The training period is also considered as service and as such it will count for pension after their confirmation against the substantive and permanent post.

iv) CH. ROLL ....."

A perusal of the aforesaid circular, therefore, clearly shows that since fixed pay is sanctioned to the recruits for the training period, they will be considered to have been appointed in service from the date they undergo training. The training period is also considered as service and as such it will be counted for pension after their confirmation against the substantive and permanent post. Though this has been stated in the context of pension but as it mentions that the recruits will be considered to have been appointed in the service from the date they undergo training and this training period should also be considered as service period, there is no logical reason as to why the said period spent in training should not be counted for the purposes of granting other benefits.

It needs to be mentioned that Clause (ii) of the aforesaid circular only prohibits grant of increment during the training period since during this period they draw a fixed pay but it has also been mentioned that they will draw their usual increments when they are absorbed as Constable in the pay scale. The benefit of training period for calculating the service period for grant of promotional pay scale cannot be denied only because this particular aspect has not been dealt with in the aforesaid circular dated 8th November, 1965 as it is in the intention behind the issuance of the circular that has to be seen.

The contention of the learned Standing Counsel, therefore, that the counting of the training period should be restricted for pension purposes, cannot be accepted and nor is the reason assigned in the order dated 11th May, 2006 on the basis of Clause (ii) of the circular for not counting the training period a valid reason.

The note dated 28th March, 2007 sent by the Financial Controller, U.P. Police Headquarters, Allahabad mentions that the training period should be counted only for the purposes of pension and post retirement benefits but not for any benefits during the service period. This direction contained in the aforesaid note is contrary to the earlier circular dated 8th November, 1965 which provides that the recruits should be treated to have been appointed in the service from the date they undergo training and this period should also be considered as period spent in service.

Thus, for the reasons stated above, the respondents are not justified in not counting the period spent in training for the purposes of calculating 24 years of service for grant of promotional pay scale to the petitioners. The writ petition is allowed with a direction to the respondents to count the training period of the petitioners for the purposes of granting second promotional pay scale.