

(1999) 04 AHC CK 0103
In the Allahabad High Court
Case No : C.M.W.P. No. 39756 of 1997

Ranbir Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157

Uttar Pradesh Police Regulations, 1948 — Regulation 50, 51, 51(4), 55, 56

Citation : (1999) 2 AWC 1731

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant; I.S. Singh, S.C., for the Respondent

Judgement

A.K. Yog, J.—It is a petition by 20 persons, who claim to have been working as Head Constables in various police stations in different Districts of the State of Uttar Pradesh.

2. Petitioners claim that they were working on the date of filing of petition in the pay scale of Rs. 1,640-2,900 having their designation as Head Constables. According to the petitioners, this promotional pay scale in the cadre of Head Constable is the minimum in the pay scale provided for a cadre of Sub-Inspector. Relevant details have been given in paragraphs 2 and 3 of the writ petition as well as chart filed as Annexure-1 to the writ petition. Petitioners claim that respective duties assigned to different cadres and officers have been provided in the Police Regulations. Regulations 55 to 57 provide for duties of Head Constable.

3. Regulation 51 of the U. P. Police Regulations lays down duties assigned to a person working on the post of Sub-Inspector. It is contended that the duties as contemplated under relevant paragraphs of the Police Regulation provide for duties of the Head Constable, which do not include investigation of cases. The petitioners further contended that the appointment on the post of Sub-Inspector is to be effected by filling 50% vacancy through direct recruitment and rest 50% through promotion (25% of which by departmental examination and the rest

25% to be filled solely on the basis of seniority subject to unfit in the next below cadre, that is, from Head Constables). It has been stated in paragraph 11 of the writ petition that following the procedure contemplated in the Police Regulations, promotions were made on July 3, 1996 to the post of Sub-inspector from Batch No. 56. Petitioners allege that no departmental promotion or through seniority, as contemplated under the Police Regulations has been made from the candidates belonging to Batch Nos. 55 and 56. Petitioners claim that the other incumbents belonging to Batch Nos. 57 to 61 cadre, who matured their right, have been given promotional pay scale arbitrarily and illegally and the petitioners have been thus denied regular promotion and designation as Sub-Inspector.

4. According to the petitioners, who belong to Batch Nos. 58 to 61 have been claiming their right of being considered for promotion in accordance with the provisions of the U. P. Police Regulations to the post of Sub-Inspector, but the Government, instead of paying heed to their legitimate claim, has resorted to a novel device by issuing Notification dated 15th September, 1997 (copy of which has been annexed as Annexure-4 to the writ petition) which seeks to assign certain duties of investigation (to be discharged by Sub-Inspector) but denies them the designation and cadre of Sub-Inspectors. A copy of letter dated 18th September, 1997 purported to have been issued by the Deputy Inspector General of Police, U. P., Lucknow, has been filed as Annexure-5 to the writ petition.

5. The petitioners have filed another copy of the Demi Official letter dated 30th September, 1997 purported to have been written by Rameshwar Dayal, Deputy Inspector General of Police (Personnel), Allahabad addressed to all the Senior Superintendents of Police and all other Circle Officers in charge and therein, it was directed that seniority list of all the Constables be prepared for considering the question of promotion on the posts of Deputy Inspector.

6. The petitioners have further alleged that there is no post like Assistant Sub-Inspector as is mentioned in the order dated 18th September, 1997.

7. The contention of the petitioners is that since the Government Notification dated 15th September, 1997 and the consequential order dated 18th September, 1997 (Annexure-5 to the petition) contemplate that a Head Constable in a particular pay scale [Rs. 1.640-2.900) can be conferred with additional rights and powers by the "Station Incharge" for investigating criminal case of particular nature, as contemplated in the said Government Notification (Annexure-4), the conferment of such power is with respect to a distinct class. Said Notification dated 15th September, 1997 contemplates that such additional right and powers shall be conferred upon Head Constables of particular pay scales and who may be assigned additional duties of investigation by the Station Incharge. Reading of this Notification clearly shows that the Head Constables, who have been vested with powers to make investigation under the said Notification in criminal cases of specified nature, they shall act as officers of distinct class. This interpretation of the Notification is further borne out from a perusal of the letter dated 18th September, 1997 (Annexure-5) which provides that such special class of Head

Constable who are being vested with additional powers to investigate specified nature of cases shall be entitled to "Star" as contemplated in paragraph 16 of the U. P. Police Dress Regulation. The said order further shows that the said dress shall be which is prescribed for Deputy Inspector. A bare perusal of the said order dated 18th September. 1997 leaves no doubt about intention. A copy of the said letters is filed as Annexures-4 and 5 to the petition. In paragraph 2 of the order dated 18th September. 1997, it is clearly mentioned that such Head Constables who have been vested with the power to investigate criminal cases (as specified in Government Notification dated 15th September. 1997) shall have the designation/ nomenclature as Head Constable [Promotional Pay Scale).

8. The petitioners' grievance in short appears to be that under impugned Government Notification and Order, they are required to perform additional duties by conferring additional powers, which are attached to the post of Sub-Inspector under U. P. Police Regulation, they are being asked to perform practically the duties of Sub-Inspector without their being promoted even though they are entitled under law.

9. The petitioners, in paragraph 30 of the petition, have made a categorical averment to the effect that the petitioners are being allowed investigation in major offence like N.D.P.S. Act and in support of their contention, they have filed a copy of an order purporting to Suresh Chand, petitioner No. 20 (Annexure-10 to the writ petition). This paragraph 30 has not been denied by the respondents in their counter-affidavit. In paragraph 30 of the counter-affidavit, there is a bald denial. Paragraph 30 of the counter-affidavit reads thus :

"30. That the contents of paragraph 30 of the writ petition need no comments."

10. Heard Sri Shailendra. Advocate, learned counsel for the petitioner and Sri I. S. Singh, learned standing counsel on behalf of the respondents.

11. The duties pertaining to the Head Constable are provided vide Regulation 55 of the U. P. Police Regulations and the duties and functions of Sub-Inspector have been mentioned in Regulation 51 of the said Regulations. These provisions have been quoted in paragraphs 5 and 6 of the writ petition. Regulation 55 (8) of the U. P. Police Regulations lays down that a Head Constable can be required to perform duties mentioned in paragraph 51 (Except those mentioned in paragraph 51 (4) when there is no Second Officer. This shows that a Head Constable is not supposed to undertake investigation. Regulation 57 lays down that when a Head Constable is in charge of the police station and has to make investigation u/s 157 of the Code of Criminal Procedure, he shall be required to make over his clerical duties and if he leaves the Station, the charge of the Station shall be given to the next senior literate head constable or constable. In that contingency, such a constable shall carry on investigation until he is relieved by Sub-Inspector or the work is finished. The said regulation provides. "On no other occasion may a head constable (other than an investigation head constable) make an investigation". Paragraph 191 of the Police Manual provides for ad hoc/stop gap and make shift

arrangement by making ad hoc/officiating promotion of Head Constable only.

12. In view of the averments contained in paragraph 25 of the writ petition, petitioners contend that more than 8,000 vacancies of the post of Sub-Inspectors were existing, the petitioners have matured their rights for being considered by way of promotion under the relevant regulation, but still the respondents, instead of making regular promotion, have taken recourse to get the work done by passing the impugned Notification and Government Order (Annexures-4 and 5 referred to above).

13. A supplementary affidavit has been filed today and a copy of the same has been served on standing counsel today, i.e., (19th April, 1999). Petitioners have filed a photo copy of the letter of Senior Superintendent of Police, Saharanpur dated 26th March, 1999 and on behalf of the petitioners, it is contended that the respondents are proceeding with the direct selection and appointment on the post of Sub-inspector. The facts sought to be brought on record by means of the supplementary affidavit are only in respect of contention of the petitioners already made in the writ petition vide paragraphs 25 and 26 of the writ petition.

14. Learned standing counsel on behalf of the respondents contended that reading of the Government Notification dated 15th September, 1997 (Annexure-4 to the petition) does not indicate that any special class is being created by conferring additional powers on Head Constables in a particular pay scale. The thrust of argument of learned standing counsel is based upon the joint reading of the said Notification along with letter dated 18th September, 1997 (Annexure-5), but learned standing counsel submits that by requiring Head Constables to perform additional duties of investigation though they may be subject-matter of the duties of Sub-Inspector, vesting additional right and powers does not confer any special status or a special class and hence, there is no illegality in issuance of the said Notification and the Government Order. Learned standing counsel, however, failed to point out as to how the department had addressed Suresh Chand (petitioner No. 20) as A.S.I. [Probably it refers to the designation--"Assistant Sub-Inspector"). The language employed in the Government's Order dated 15th September, 1997, the letter dated 18th September, 1997 and the subsequent correspondence at the behest of Respondent No. 6 (particularly Annexure-10 to the writ petition wherein Suresh Chand, Petitioner No. 20 has been addressed as A.S.I.) leaves no room for doubt is left and there can be no inference except that Head Constable in particular pay scale, if conferred additional powers and rights for carrying on investigation in specified cases as mentioned in the said Government Notification (Annexure-4) they were distinguished by another designation.

15. Having considered the respective contentions of the parties, one thing constantly troubles this Court and the Court expresses its regret that the respondents have made no effort to bring on record and justify as to why the vacant posts of Sub-Inspector, which are required to be filled by departmental examination and on the basis of seniority to the extent of 50% are not filled up.

In case regular promotions are made and posts are filled, there may not arise question of making any ad hoc arrangement except in exceptional cases and further no such notification shall be necessary by issuing a general notification and the order (Annexures-4 and 5). A genuine apprehension arises that the Respondents may not resort to the regular promotion and deny legitimate right of the petitioners for being considered for promotion (which is a valuable and a legitimate expectation of a person serving in a Government Department or for that matter in service) and, on the other hand, got the work done through Head Constables which is otherwise required to be performed by the Sub-Inspector. The other question which immediately emerges is that if such a procedure is permitted as a general course, it is bound to affect quality of investigation--the Head Constable cannot be equated in general with the Sub-Inspectors as otherwise there is no idea in having two different cadres providing different pay scales. Vacancies on the post of Sub-Inspectors must be filled year to year. But no material has been brought on record to show that any effort has been made at the behest of the respondents to fill up the posts of Sub-Inspectors on regular basis. Learned standing counsel refers to Annexure 6, which is letter dated 30th September. 1997 addressed to Senior Superintendent of Police which seeks to justify his stand on its basis. The stand taken by the standing counsel is wholly misconceived. The said letter does not indicate that any serious effort was made at the right stage and even if this letter was issued, there is nothing on record to show that all possible efforts were made for making appointments on the post of Sub-Inspectors.

16. In view of the statutory provision of Police Regulations, particularly paragraph 51, which lays down that the powers and duties to investigate cases are that of Sub-Inspector and Regulations 50 and 55 (a) and (d), which provide that only in a specified contingency and subject to exception of Regulation 51 (4) a Head Constable may be required, as an ad hoc arrangement to perform duties of investigation as investigating Officer. This leaves in no doubt that the duties of investigation cannot be conferred upon the Head Constable by a general order as is being done and sought through the impugned Notification dated 15th September, 1997 and the letter dated 18th September. 1997 (Annexure-5). The Government Notification dated 15th September, 1997 itself provides that the said Notification shall not be implemented as a general rule and that the Head Constables in the prescribed pay scale. If required to undertake investigation, as contemplated under the said Notification, shall not be treated as a distinct class and to this extent the order dated 18th September. 1997 (Annexure-5) shall also not be given effect to so as to create a different cadre and class having designation in contradistinction to those contemplated under the U. P. Police Regulation.

17. In view of the uncontroverted averments in the writ petition, it is directed that the respondents shall forthwith resort to the process of fulfilling all the existing vacancies of the post of Sub-Inspectors first by making promotion to the extent of 50% (25% by departmental examination and the 25% on the basis of

seniority subject to unfit) and after completing said promotion alone, direct recruitment shall be made on the post of Sub-Inspector. The said process of making promotion must be completed within four months from the date of having received certified copy of the judgment which must be communicated by the learned standing counsel within three weeks from today. The learned standing counsel is directed to communicate this order to the concerned authorities.

18. The writ petition is allowed partly subject to the observations made above. There will be no order as to costs.