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**(2008) 08 AHC CK 0284**  
**In the Allahabad High Court**

State of U.P. and Others

APPELLANT

Vs

Nagesh Upadhyay and Another

RESPONDENT

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**Date of Decision :** 12-08-2008

**Acts Referred:**

**Citation :** (2008) 4 AWC 4050 : (2009) 1 UPLBEC 179

**Hon'ble Judges :** Ashok Bhushan, J;Arun Tandon, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Ashok Bhushan and Arun Tandon, JJ.—State of U.P. has filed this special appeal against the judgment and order of learned single Judge dated 12th April, 2005, whereby bunch of writ petitions have been allowed by issuing a writ of mandamus restraining the State authorities from recovering the difference between the salary and allowances paid vis-a-vis stipend which should have been paid (for the period of training) to the petitioners, who were selected as Sub-Inspector Civil Police/Platoon Commander, P.A.C. in 1999 Examination and had undergone training in the year 2001-02. A further direction has been issued that if any recovery has already been made, the same shall be restored to the petitioners concerned.

2. The facts relevant for deciding the present special appeal are as follows:

An advertisement was published by the State of U.P. for recruitment on the post of Sub-Inspector Civil Police/Platoon Commander, P.A.C. in the year 1999. The result of selection was declared on 6th July, 2001. The selected candidates were issued appointment letters in terms of the Government order dated 8th June, 1998 and thereafter sent for training. During the period of training the selectees were paid regular salary in the minimum of the pay scale along with the allowances admissible to the post. The selectees are stated to have completed their training in the year 2001-02.

3. After the training was completed, the State Government came out with

Government orders dated 7th July, 2003 and dated 28th October, 2003 whereunder it was recorded that the trainee Sub-Inspector Civil Police/Platoon Commander P.A.C. were entitled to stipend and other allowances only for the period of training and not to the regular salary as had been paid to them, therefore excess amount paid be recovered. These Government orders became the bone of contention and led to filing of large number of writ petitions by the Sub-Inspector Civil Police/Platoon Commander P.A.C.

4. In order to keep the record straight it may be noticed that on the strength of the Government order referred to above, recovery proceedings of difference of the amount between the stipend and salary actually paid to the aforesaid Sub-Inspector Civil Police/Platoon Commander, P.A.C. for the period of training were also initiated. The writ court while entertaining the writ petition granted an interim order, whereby recovery of the difference was stayed till the decision of the writ petition.

5. The learned single Judge after noticing the provisions of the Government order dated 8th June, 1998, which permitted the appointment of the Sub-Inspector Civil Police/Platoon Commander, P.A.C. before being sent for training, recorded that in view of the same If salary has been paid to the selected Sub-Inspector Civil Police/Platoon Commander, P.A.C. for the period they were under training subsequent to their appointment, no illegality can be said to have been occasioned because of such payment. It has further been recorded that the Government orders Issued on 7th July, 2003 and dated 28th October, 2003 were prospective in nature and had the effect of reversing the policy, which was earlier notified by the State Government under the Government order dated 8th June, 1998, prospectively only.

6. Lastly it was held that even otherwise if no misrepresentation or fraud is attributable to the Sub-Inspector Civil Police/Platoon Commander, P.A.C, who had been paid salary for the period of training, no recovery of the alleged difference can be permitted to take place in the eye of law.

The learned single Judge has placed reliance upon the judgments of the Hon''ble Supreme Court for the aforesaid purpose, which are being noticed hereinbelow:

State of Orissa and Others Vs. Adwait Charan Mohanty and Others, ; Nand Kishore Sharma and others v. State of Bihar and others The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others,

7. The learned single Judge has therefore issued a writ of mandamus commanding the State authorities not to recover the difference as per Government orders dated 7th July, 2003 and dated 28th October, 2003 and if any amount has been recovered in respect of the said difference, same has been directed to be refunded.

State not being satisfied has filed this intra Court appeal.

8. Standing Counsel on behalf of the appellant submits that since the petitioners could have been appointed only after they had completed the training successfully, they could have been paid salary admissible to the post only after completion of the training and for the period of training they are entitled to stipend and other allowances only. It is further stated that the finance department did not approve the office memorandum dated 8th June, 1998, which permitted the appointment of Sub-Inspector Civil Police/Platoon Commander, P.A.C. before they were sent for training. It is, therefore, submitted that in the facts of the case the Government was Justified in recovering the difference as per the Government order dated 17th September, 2002 as also in view of the Government orders dated 7th July, 2003 and dated 28th October, 2003.

9. In support of the contention so raised standing Counsel has also placed reliance upon the judgment of the Hon"ble Supreme Court in V. Gangaram v. Regional Joint Director of Education and Ors. 1997 SCC (L & S) 1652 , as also upon the Judgment of the Hon"ble Supreme Court in Radha Kishun Vs. Union of India (UOI) and Others,

We have heard learned standing Counsel on behalf of the appellant and have perused the records. Nobody is present on behalf of the respondents even in the revised reading of the cause list.

10. From the record as it stands before us following facts are undisputed:

(a) The writ petitioners were selected after open market competition for the post of Sub-Inspector Civil Police/Platoon Commander, P.A.C. in the year 2001. They were offered appointment on the post of Sub-Inspector Civil Police/Platoon Commander, P.A.C. in terms of the Government order dated 8th June, 1998, which held the field on the relevant date.

(b) After such appointment, the Sub-Inspector Civil Police/Platoon Commander, P.A.C. were sent for training and for this period of training they were paid minimum of the pay scale admissible to the post.

(c) The aforesaid candidates/trainees completed the training successfully and thereafter Joined on their respective posts.

(d) After more than one year of their successful completion of the training, the State Government came out with a policy decision by means of the Government orders dated 17.9.2002, dated 7th July, 2003 and dated 28th October, 2003. which virtually had the effect of revising the policy of appointment after selection under the Government order dated 8th June, 1998. Under the Government order dated 17.9.2002, dated 7.7.2003 and dated 28th October. 2003 it has been provided that the selected Sub-Inspector, Civil Police/Platoon Commander, P.A.C. shall be sent for training first and it is only after they complete the training successfully, that appointment letter shall be issued in their favour. For this period of training they shall be paid stipend and other allowances only. Further

any excess payment made to the selectees has been directed to be recovered.

(e) It is further admitted on record that no fraud or misrepresentation has been attributed to the Sub-Inspector. Civil Police/Platoon Commander, P.A.C. qua payment of minimum of the pay scale admissible to the post for the period of training.

11. After having noticed the aforesaid facts, we are of the considered opinion that the appointments as were offered to the petitioners subsequent to their selection as Sub-Inspector Civil Police/Platoon Commander, P.A.C. was strictly in accordance with the Government order dated 8th June, 1998. If an incumbent has been appointed on the post and sent for training subsequently. It~ logically follows that he will become entitled for salary admissible to- the post and therefore in such circumstances no illegality was committed by payment of the minimum of the pay scale admissible to the post to the trainees Sub-Inspector, Civil Police/Platoon Commander, P.A.C.

12. The Government orders issued in the year 2002 and 2003 are all prospective in nature and cannot in any way be read so as to suggest that the appointments, which were offered to the selected Sub-Inspector. Civil Police/Platoon Commander, P.A.C. in terms of the Government order dated 8th June, 1998, were illegal.

In any view of the matter since no fraud or misrepresentation is alleged qua excess payment, we are satisfied that the learned single Judge was justified in recording that the salary paid to the Sub-Inspector, Civil Police/Platoon Commander, P.A.C. for the period they had undergone the training subsequent to their appointment on the post cannot be recovered.

13. The law laid down in the Judgments of the Hon"ble Supreme Court, as noticed herein above, has rightly been applied in the facts of the present case by the learned single Judge.

So far as the judgments relied upon by the standing Counsel in the case of V. Gangaram (supra) is concerned, we may point out that in the aforesaid case payment of two additional increment was made in favour of an incumbent, who did not fulfil the prescribed statutory qualification for grant of such additional increment and it is in this background the Hon"ble Supreme Court has held that payment of two additional increment was not justified and therefore directed recovery.

14. It is apparent that in the said case where the incumbent did not satisfy the essential minimum statutory requirements for grant of additional benefit, the Hon"ble Supreme Court has permitted the recovery of excess pay. The facts of the case in hand are clearly distinguishable, inasmuch as it is admitted on record that the petitioners fulfil all the requisite qualifications, they had been selected from open market competition and had been offered appointment in terms of the Government order dated 8th June, 1998 and during the period of training they

were paid minimum of the pay scale. There was no other Government order in force, which provided otherwise.

15. So far as the judgment of the Hon''ble Supreme Court in the case of Radha Kishun (supra) is concerned, it may be noticed that in the said case an incumbent was permitted to continue even after he had attained the age of superannuation as prescribed under the statutory rules. The Hon''ble Supreme Court permitted the recovery of the excess salary so paid.

16. Thus, in the aforesaid two cases the Hon''ble Supreme Court has permitted recovery of excess salary only when there has been infringement of statutory rules and not otherwise.

17. In such circumstances the aforesaid two judgments do not help the appellant in any manner and the law as referred to by the learned single Judge in his judgment for restraining the recovery of the difference, paid to the Sub-Inspector Civil Police/Platoon Commander, P.A.C. is legally justified and does not warrant any interference. Appeal is, accordingly, dismissed.