

**(2014) 11 AHC CK 0238**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 504 of 2014**

State of U.P.

APPELLANT

Vs

Dharmendra Singh

RESPONDENT

**Date of Decision :** 10-11-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2014) 10 ADJ 131 : (2015) 1 ESC 191

**Hon'ble Judges :** Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J

**Bench :** Division Bench

**Advocate :** A.K. Goyal, Addl. C.S.C, Advocate for the Appellant; B.N. Singh Rathore, Advocate for the Respondent

## Judgement

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Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Pradeep Kumar Singh Baghel, J.  
—The special appeal arises from a judgment of the learned Single Judge dated 4 September 2013 allowing a batch of writ petitions filed under Article 226 of the Constitution including the writ petition Writ-A No 15428 of 2013 filed by the respondents. Accepting the submission which has been urged on behalf of the respondents, the learned Single Judge has declared a Government Order dated 17 September 2002 to be ultra vires and has directed the appellants to pay to the respondents their salary and allowances, in place of a stipend during the period when the respondents were undergoing training for appointment as Constables, in the police department of the State.

2. The respondents were appointed between 17 September 2002 and 2 December 2008. Prior to 1998, it is not in dispute that persons who were recruited as Constables, Sub Inspectors and Platoon Commanders were only entitled to the payment of a stipend during the period of training. On 8 June 1998, an Office Memorandum OM was issued by which it was stipulated that persons who had been selected as Constables, Sub Inspectors and Platoon

Commanders would be granted appointments upon which they would be entitled to salary and allowances while being posted on training. On 17 September 2002, a fresh OM was issued which, while amending the earlier OM, stipulated that during the course of the training, the trainees would be entitled only to the payment of a stipend and that these provisions would be applicable prospectively to all appointments which were to be made in future.

3. On 7 July 2003, an OM was issued by which it was provided that consequent upon the modification of the OM dated 8 June 1998, recoveries would be effected from those trainees who had been appointed between 8 June 1998 and 17 September 2002, of amounts which were paid in excess of the stipend which was admissible to them. This resulted in a batch of writ petitions being filed before this Court by persons who were recruited as Sub Inspectors in the Civil Police or Platoon Commanders in the Provincial Armed Constabulary as a result of a selection process which had commenced in 1999 and of which results were declared on 6 July 2001. Such persons were issued letters of appointment in terms of the OM dated 8 June 1998 and were sent on training during the course of which they were paid regular salary in the minimum of the pay scale together with other allowances. Their submission was that they were paid their salaries in accordance with the prevailing OM dated 8 June 1998 and should not be made to suffer by ordering recoveries merely because the Finance Department had not granted its approval to the OM.

4. A learned Single Judge of this Court held in a judgment dated 12 April 2005 in *Nagesh Upadhyay Vs. State of U.P.*<sup>1</sup> that the policy of the State Government under an earlier Government Order dated 24 April 1989 was that Sub Inspectors and Platoon Commanders were initially required to undergo training on the payment of a stipend. Appointments were given only to those who had successfully completed training. This was spelt out in Regulations 534 and 535 of the Uttar Pradesh Police Regulations. This policy was reconsidered when an OM was issued on 8 June 1998 wherein it was decided to first appoint persons upon selection and thereafter to send them for training. All the petitioners before the Court in *Nagesh Upadhyay's* case were given appointment letters before they were sent for training and as such became members of the service from the date of their appointments. The policy as reflected in the OM dated 8 June 1998 was not approved by the Finance Department as a result of which the State Government modified the policy and issued an OM dated 17 September 2002. In that case, all the petitioners had completed their training before the issuance of the OM dated 17 September 2002 and had received their salaries during training. On this conspectus of facts, the learned Single Judge has held as follows:

"10. On a careful consideration of the matter, I find that once the petitioners are appointed and become members of service, they were entitled to full pay and allowances. The State Government did not reverse the policy of giving appointment before training. The policy to first give appointment letters and then to send the recruits for training continued to be operative. In case the State

Government had reversed the policy and had decided to appoint the petitioner only after the successful completion of training, they were justified to give such recruits on stipend at the rate prescribed in the O.M. Once the recruits are appointed and become members of service they are entitled to full pay and salary in accordance with the Fundamental Rules."

5. Consequently, the directions for recovery were set aside. The learned Single Judge clarified that the Court was not considering a challenge to the OM dated 17 September 2002 which would be dealt with in an appropriate case if the legality of the OM was impugned.

6. In the present case, all the writ petitioners, it is an admitted position, were selected between 17 September 2002 and 2 December 2008. The fact that the writ petitioners were appointed after 17 September 2002 assumes significance because that was the date on which the earlier OM was modified by the State Government so as to provide only for the payment of a stipend during the period of training. The writ petitioners (the respondents in the special appeal) were specifically informed that they would be entitled to only the payment of stipend. Each of them was informed that the selection was purely on a temporary basis. The selected candidates entered into agreements which stipulated that after they were appointed in the police department of the State, they would be liable to pay a fine in the event they left the service within a period of two years.

7. A writ petition was filed before a learned Single Judge in 2013, seeking to challenge to the validity of the OM dated 17 September 2002 and for a mandamus commanding the appellants to pay to them the entire salary and allowances in place of the stipend during the period of their training. The writ petition has been allowed by a learned Single Judge by the impugned judgment and order dated 4 September 2013. The learned Single Judge has placed reliance on the decision of the learned Single Judge in Nagesh Upadhyay's case (supra) and has come to the conclusion that once the incumbents were appointed and became members of the service, they would be entitled to full salary and allowances and not only to the stipend. In the circumstances, the OM dated 17 September 2002 was struck down as ultra vires. In the view of the learned Single Judge, the substitution of the word "stipend" was illegal and on appointment all the appointees constituted one class and were entitled to similar treatment without discrimination or distinction.

8. The State is in appeal.

9. The learned Chief Standing Counsel has submitted that:

"(i) all the appointments in the present case have been made between the period 17 September 2002 and 2 December 2008;

(ii) during the relevant period, there was no provision for the payment of salary during the period of training and such a provision was incorporated only by the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008;

(iii) the petition was filed only in 2013, five or six years after the recruitment in service. All the writ petitioners were on notice that during the period of training, they would only be entitled to the payment of a stipend and it was not open to them, having accepted the terms of selection, to resile therefrom;

(iv) Nagesh Upadhyay's case stood on a completely different footing because all the petitioners who had moved the Court in those proceedings had been appointed when the OM dated 8 June 1998 held the field and prior to the enforcement of the OM dated 17 September 2002. Those writ petitioners were appointed under a policy which stipulated that persons selected would be first appointed and then sent on training and that they would be entitled to full salary and allowances during the period of their training. It was on this basis that the learned Single Judge set aside the recoveries which were made. In marked distinction in the present batch of cases, all the writ petitioners were appointed after the OM dated 17 September 2002 had been brought into force and were on notice of the fact that during the period of training, they would only be entitled to the payment of a stipend; and

(v) the only basis for the challenge to the OM dated 17 September 2002 was that it was discriminatory. There was absolutely no basis in this plea."

10. On the other hand, learned counsel appearing on behalf of the respondents supported the view of the learned Single Judge and submitted that:

"(i) Nagesh Upadhyay's case had laid down the principle that the policy of the State was to first furnish letters of appointment and then to send the recruits on training. This being the position, recoveries were set aside by the learned Single whose order was affirmed in appeal by the State Government;

(ii) In certain cases, the State has, in fact, made payment of full salary and allowances, even to persons who were recruited between 17 September 2002 and 2 December 2008;

(iii) the learned Single Judge was justified in coming to the conclusion that once appointed to the service, all the recruits had to be dealt with on an even footing and hence the payment of a stipend during the period of training was arbitrary and was liable to be set aside; and

(iv) subsequently, on 27 May 2011, an OM has been issued by the State Government to resolve the anomalies and to provide for the payment of salary during the period of training in compliance with the orders passed by the High Court. This view has been taken in respect of all persons who were recruited as Constables, Sub Inspectors and Platoon Commanders between 8 June 1998 and 17 September 2002."

11. The rival submissions now fall for consideration.

12. Regulation 534 of Chapter XXXVI of the Police Regulations deals with the training of Sub Inspectors and provides as follows:

"534. Sub-Inspectors of the Civil Police must pass through the Provincial Police Training College. For their training at the College and their practical training in districts see the Uttar Pradesh Police Training College Manual, Part III.

From the date on which they are posted to districts as Sub Inspectors, civil police, Sub Inspectors shall be on probation for a period of two years, on the expiry of which if he considers them fit for permanent appointment they may be confirmed by the Deputy Inspector General."

13. Regulation 539 forms part of Chapter XXXVII which deals with training of Head Constables and Constables. Regulation 539 provides as follows:

"539. Recruits both for the civil and for the armed police will be trained at such places and in such manner as the Inspector General may determine and on conclusion of their training will undergo such tests as the Inspector General may prescribe."

14. Regulation 541 (1) provides that a recruit shall be on probation from the date he begins to officiate in a clear vacancy. The period of probation is to be two years. If, at the end of the period of probation, the conduct and work has been satisfactory and the recruit has been approved by the Deputy Inspector General of Police for service in the force, the Superintendent of Police will confirm him in his appointment. Regulation 541 (2) provides for the discharge of a probationer.

15. Initially, under a Government Order dated 24 April 1989, Sub Inspectors, Civil Police and Platoon Commanders were required to undergo training on the payment of a stipend and appointments were to be given only to those who had successfully completed their training. On 8 June 1998, the State Government took a decision to the effect that Constables, Sub Inspectors and Platoon Commanders would, upon selection, be granted appointments and that they would be entitled to the payment of their salary and allowances upon being sent for training. This policy underwent a change on 17 September 2002 when the State Government took a decision that during the period of training, the selected candidates would be entitled to the payment of a stipend in place and instead of the payment of salary and allowances. This, it was clarified, would apply to all appointments which were made after the date of the decision. By an OM dated 7 July 2003, a decision was taken to effect recoveries from those who were recruited between 8 June 1998 and 17 September 2002 in respect of payments which were made in excess of the admissible stipend. Nagesh Upadhyay's case dealt with those recruits who were selected in pursuance of a selection process which took place in 1999, the result of which was declared on 6 July 2001. They were all sent for training in pursuance of the OM dated 8 June 1998 which held the field. The decision of the learned Single Judge in Nagesh Upadhyay applied to a situation when the modified policy dated 17 September 2002 had not come into force when the recruits had been granted letters of appointment and had been referred for training. When the recruitment process was completed and recruits were sent on training, the applicable policy was in terms of the OM dated

8 June 1998 which stipulated the payment of salary and allowances during the period of training.

16. The petitioners before the Court in the batch of writ petitions leading to the present special appeal were admittedly recruited after 17 September 2002 when a decision was taken by the State Government to the effect that during the period of training, they would be entitled to the payment of a stipend. The writ petitioners accepted the terms of their engagements and were clearly informed of the position that they would be entitled to the payment of a stipend during the period of their training. Having accepted the terms of engagements, we find force in the submission which has been urged by the learned Standing Counsel that it was not open for them to resile from the position and to seek the payment of full salary and allowances nearly five years thereafter in a writ petition filed under Article 226 of the Constitution, in 2013.

17. The grounds which were urged in support of the challenge to the OM dated 17 September 2002 merit emphasis. A perusal of the grounds in the writ petition indicates that the challenge was that persons "like the writ petitioners" who were recruited between 8 May 1998 and 17 September 2002 were given their salary and allowances during the period of training. A similar position holds in respect of those who were recruited after 2 December 2008. It was on this basis that it was claimed that the payment of a stipend to the writ petitioners who were appointed between 18 September 2002 and 1 December 2008 was arbitrary. Now, insofar as appointments after 2 December 2008 are concerned, those appointments are governed by the statutory rules which were brought into force. Persons appointed prior thereto do not stand on the same footing. The case of persons who were appointed between 8 June 1998 and 17 September 2002 (such as those in Nagesh Upadhyay's case) is clearly distinct. Persons appointed between those two dates were governed by OM dated 8 June 1998 under which it was clearly stipulated that full salary and allowances would be paid during the period of training. The provision underwent a change after 17 September 2002 when a decision of the State Government clarified that during the period of training, only a stipend would be paid. The view of the learned Single Judge is, with respect, erroneous because it proceeds on the basis of a fallacious line of reasoning that the writ petitioners were governed by the decision in Nagesh Upadhyay's case. As a matter of fact, Nagesh Upadhyay's case governed the case of those persons who were appointed before the change in the policy. There is no basis in the plea of discrimination. The State was entitled to take a conscious policy decision that during the period of training, a person who had been sent for training should be paid a stipend. As a matter of fact, Regulation 534 of the Police Regulations clearly requires Sub Inspectors to undergo a period of training and it is only on their being posted to the districts as Sub Inspectors, that they would be on probation for a period of two years. Similarly, Regulation 539 provides for the training of Head Constables and Constables and Regulation 541 provides that the period of probation of a recruit will start from the date on which he begins to officiate in a clear vacancy. It was not the case of the writ petitioners either

before the learned Single Judge or in the submissions in the special appeal that they were probationers or that they were officiating in a clear vacancy. Plainly they were not, and no such submission is urged before the Court. The OM dated 27 May 2011 applies to persons who are recruited between 8 June 1998 and 17 September 2002. In the case of such persons, the State took a decision following the judgment in Nagesh Upadhyay's case to provide for the payment of salary and allowances during the period of probation. The case of the writ petitioners in these proceedings clearly stands on a distinct basis. Hence, there is no substance in the plea of discrimination. Even if payment, as was urged on behalf of the respondents, has been erroneously made to others who are recruited after 17 September 2002, that can give rise to no vested entitlement on the part of the writ petitioners (the respondents herein).

18. For these reasons, we find merit in the submission which has been urged on behalf of the State. The view which has weighed with the learned Single Judge is, with respect, erroneous. We, accordingly, allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 4 September 2013 passed in Writ-A No. 15428 of 2013. The writ petition, in consequence, shall stand dismissed. There shall be no order as to costs.

1 Civil Misc Writ Petition No 54870 of 2004 and connected cases