

(2013) 09 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 5282, 5283, 5423, 9302, 9817, 9820, 11703, 15428, 15430, 15546, 15548, 15550, 24737, 24738, 32140, 32157 45177, 62797, 62938 and 65427 of 2013

Sudeep Kumar (1601 CP) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 9 ADJ 709 : (2014) 2 ALJ 616 : (2013) 101 ALR 589 : (2014) 3 AWC 2302 : (2014) 141 FLR 789 : (2014) 140 FLR 201 : (2014) 1 LLN 609 : (2013) 4 UPLBEC 3388

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : B.N. Singh Rathore and Vivek Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—In all these writ petitions the question of fact and law are common, therefore, have been heard together and are being decided by this common judgement. The petitioners are non-Gazetted Police Officers in terms of regulation 398 of Police Regulations(hereinafter referred to as "Regulations") and are working as Constable or Head Constable as the case may be. These posts admittedly, are of Group "C" category. They constitute subordinate Police Officers of general police force in the State of Uttar Pradesh. After their selection in accordance with relevant provisions, all of them have been appointed between 17th September, 2002 to 02nd December, 2008. Earlier the procedure before appointment was that the selected candidates were used to be sent for training and thereafter, appointed on respective posts. During training, the incumbents were paid stipend and after appointment, they used to be placed in regular pay scale with all attending allowances etc.

2. In purported exercise of power u/s 2 of Police Act 1861 (herein after referred to as "Act 1861"), Government Order (herein after referred to as "G.O.") was

issued on 19th May, 1998, amended vide G.O. dated 08th June, 1998 whereby, policy with regard to appointment of Constables, Sub Inspectors, Platoon Commanders etc. changed. The State Government directed that henceforth, those who are selected for appointment on the post of Constable, Sub Inspector, Platoon Commanders, shall first be appointed and paid salary and allowances etc.; admissible to the respective posts, they shall be sent for training after appointment.

3. Those who were appointed thereafter, were placed in regular pay scale of the respective post(s) and paid salary and allowances admissible to them, as a result whereof, when they were sent for training, they continued to receive salary and allowances of respective post(s).

4. It is this G.O. dated 8th June, 1998 which has been amended again vide G.O. dated 17th September, 2002, (impugned in this writ petition) only to the extent that in place of "pay and allowances" mentioned in the G.O. dated 8th June, 1998 it shall be read as "stipend".

5. The effect of the amendment brought by the G.O. dated 17th September, 2002 in the earlier G.O. dated 8th June, 1998 is that the persons who are selected for appointment to the post of Constable, Sub Inspector, Platoon Commanders, though shall be appointed first and thereafter, sent for training but from the date of appointment and till completion of training, they shall be paid only "stipend" and not regular pay scale and allowances.

6. It is contended that once incumbent has been appointed substantively on a regular post, whether respondents (employer) deploy them for discharge of normal duty of the post or send them for training, irrespective thereof, the appointee shall be entitled for the salary admissible to the post and the same cannot be denied but substituting by a meagre amount of "stipend."

7. Learned counsel for the petitioners contended that before appointment, it may have been permissible for an employer to pay stipend or other allowances, as the case may be, during the period of training, as it may determine, but once the incumbent has been appointed, he is entitled for full emoluments attached to the said post and cannot be denied the same on the basis of nature of duty. Reliance is placed on a decision of this Court in Writ Petition No. 54870 of 2004 Nagesh Upadhyay and another v. State of U.P. and others and other connected matters decided vide judgement dated 12.4.2005.

8. Learned standing counsel, on the contrary submitted that it is a policy decision and warrants no interference by this Court. When an employer is not taking regular duty from the employee concerned, since, before deploying such person, imparting of training is necessary, during this period of training, one cannot insist to be paid requisite pay scale or allowances, which are admissible to a person who is deployed to discharge duty of regular nature attached to the post concerned.

9. Having heard the learned counsel for the parties at length and perused the record, in my view, these writ petitions deserve to succeed. The reason for the view taken above, is detailed as under.

10. Section 2 of Act 1861 empowers the State Government to constitute a Police establishment, and says that for the purpose of Act, 1861, entire Police establishment shall be deemed to be one Police force, the officers and men, be enrolled in the aforesaid Police force, shall be in such a manner, provided by the State Government.

11. The statutory orders and rules have been compiled in part HI chapter XXIX of the Regulations which relate to appointment. Regulation 396 provides that the Police force shall consist of Provincial Police, Civil, Armed and Mounted; and, Government Railway Police. They shall be appointed and enrolled under Act 1861. The Police force also consists of Village Chaukidars appointed in Agra under Act XVI of 1873 and in Oudh under Act XVIII of 1876, not enrolled under Act V of 1861.

12. Regulation 539, chapter XXXVII, provides that recruits both for civil and armed police, will be trained at such places and in such manner, as the Inspector General may determine. Regulation 541 talks of appointment of recruits on probation from the date he begins to officiate in a clear vacancy. The scheme earlier was that a person selected for appointment to a post used to be sent for training first, and after successful completion of training, appointed on a vacancy in the Police force. When he was sent for training, before appointment an amount called "stipend" used to be paid which was/is much lessor than salary in a pay scale. After appointment, the incumbent becomes entitled for the salary attached with the post.

13. By G.O. dated 8th June, 1998, earlier G.O. dated 19.5.1998 underwent amendment and the Government decided that Constable, Sub Inspector, Platoon Commanders, as the case may be, after their fresh selection, shall first be entitled for emoluments attached to the post, on which, he is appointed. Para 1 of the G.O. dated 8th June, 1998 provides that on appointment, incumbent shall be paid salary/allowances and thereafter, would be sent for training. It is this G.O. which has been partly amended by subsequent G.O. dated 17th September, 2002 whereby, the word "pay and allowances" mentioned in para 1 of the G.O. dated 8th June, 1998 was sought to be deleted by the word "stipend".

14. Learned standing counsel could not show any provision whereby, an amount less than regular pay, has been prescribed or attached with a post, to which, a person is appointed. Once appointment is made, the incumbent would hold a Hen on the post. All the perks attached to the post shall stand attracted. He would be entitled to payment in accordance with pay scale and other allowances attached with such post, irrespective of the fact, whether employer takes work from him in regular channel or sends him for training, or does not take any work, but emoluments shall be payable to such appointee in the manner, as attached to the

post concerned. There is no bar for employer to send a person for training from time to time even after appointment, but emoluments payable to such incumbent, attached to the post, cannot be reduced on the basis of nature of work sought to be taken by the employer after appointment. The very concept of giving "stipend" to an incumbent appointed on the post is strange and not recognized in service jurisprudence. No provision has been shown to this Court to the effect that for the posts in police force like Constable, Sub Inspector, Platoon Commanders, instead of giving regular pay scale and allowances, only stipend can be made admissible. In other higher service in Police Force like Deputy Superintendent of Police or I.P.S. The incumbent after appointment is sent for training but paid full salary in regular pay scale.

15. The substitution of the word "stipend", therefore, is patently illegal in as much as, all those who are appointed, constitute a single cadre. There can be no discrimination or distinction by carving out the same cadre officers on the basis of nature of work taken by the Government, like when they are decided to be sent for training after appointment. On appointment, all constitute one class and are entitled for similar treatment.

16. This aspect has also been considered in the case of Nagesh Upadhyay (Supra). In para 10 of the judgement the Court has said:

once the petitioners are appointed and became 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 to 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 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 became members of service they are entitled to full pay and salary in accordance with the Fundamental Rules.

17. The above observations make it very clear that once the incumbents are appointed and become members of service, they are entitled to full pay and allowances and not a meagre amount of stipend. In this view of the matter, the G.O. impugned in this writ petition is patently illegal, arbitrary and even otherwise, ultra vires. Hence, the G.O. dated 17.9.2002 is struck down as such. The respondents are directed to pay salary and allowances to the petitioners as admissible and payable to the appointees of respective posts. The writ petitions stand allowed in manner aforesaid.