

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

**CLAIM PETITION NO. 49/SB/2014**

1. Sri Sudhir Kumar, s/o Sri Om Pal Singh, r/o Village and Post Office Goverdhanpur, P.S. Manglaur, District Haridwar.
2. Sri Rajkumar, s/o Sri Santar Pal, r/o Tibri Colony, Ranipur, House No. 378, Haridwar.

.....Petitioners

**versus**

1. State of Uttarakhand through its Secretary, Ministry of Home Affairs, Uttarakhand, Dehradun.
2. Director General of Police (Headquarters and Karmik), Uttarakhand Police Headquarters, 12, Subhash Road, Dehradun.
3. Senior Superintendent of Police, District Haridwar.
4. Superintendent of Police (Karmik), Uttarakhand, Dehradun.

..... Respondents

Present: Sri Shashank Pandey, Advocate, for the Petitioners (virtually)  
Sri V.P. Devrani, A.P.O. for the Respondents.

**JUDGEMENT**

**Dated: 26<sup>th</sup> March, 2024**

**Justice U.C.Dhyani (Oral)**

**RELIEFS CLAIMED**

By means of present claim petition, the petitioner seeks following reliefs:

“(i) To issue appropriate order or direction quashing the impugned communication order dated 09.08.2010 issued by respondent no 4 (Annexure no. 1 to this Claim petition) along with its effect and operation also after calling the entire record.

(ii) To issue an appropriate order or direction directing the respondents to give seniority to the petitioners w.e.f. 17.04.2002 and granting all the benefits of salary along with allowances treating them to be selected on 17.04.2002 vide selection list dated 17.04.2002 and total salary during the training period and the petitioners are entitled to get compensation on account of malafide and malicious act of the respondents, had it been the impugned order was never in existence.

(iii) Issue any other rule or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) Award cost of petition.”

*[Emphasis supplied]*

**FACTS**

2. Facts, giving rise to present claim petition, are as follows:

2.1 Petitioners preferred WPSS No. 942/2010 before the Hon'ble High Court challenging the order dated 09.08.2010. The same was decided by the Hon'ble Court on 03.03.2014 by permitting the petitioners to withdraw the petition with liberty to approach the Public Services Tribunal.

2.2 Respondent No. 2 published an advertisement on 24.12.2001 inviting applications for the post of Constables in Uttarakhand Police for all the 13 districts of Uttarakhand. The

petitioners applied for the posts of Constable from district Haridwar. After submitting their application forms, the petitioners along with other candidates were called for physical test. After qualifying the physical test, they were called for written test and after qualifying the written test, petitioners were called for interview.

2.3 After entire formalities were completed, respondent no. 3 published the final list of selected candidates from district Haridwar on 17.04.2002. The name of the petitioner no. 1 was shown at serial no. 156. The name of petitioner no. 2 was shown at serial no. 195 in the select list.

2.4 The petitioners along with other selected candidates went for general training for one week in the month of April, 2002. Petitioner No. 1 was allotted chest no. 1490. Petitioner No. 2 was allotted chest no. 2050. After completing one week's general training, the petitioners were not permitted to go for regular training by communicating them orally that certain formalities were yet to be completed.

2.5 On 13.05.2002, S.S.P. wrote a letter to District Magistrate that the petitioners were registered in employment exchanges of Uttarakhand on 23.08.2001 and 18.01.2002 respectively. They were educated in Uttar Pradesh. District Magistrate was requested to take a decision and forward it to S.S.P. in view of G.O. dated 18.08.2001 and 20.11.2001. In G.O. dated 18.08.2001 and 20.11.2001, emphasis was laid on the permanent residence of the State of Uttarakhand. Only those persons would be given permanent residence proof, who permanently reside in Uttarakhand or who are residents of Uttarakhand for the last 15 years. On 18.02.2002, D.G. Police, Uttarakhand, wrote a letter to S.S.P. that the entire formalities regarding registration in the employment exchanges may be completed by 28.02.2002 so that the applicants may be

considered for selection commencing from 01.03.2001. The petitioners were selected after the entire formalities were completed (including qualification and residence). Documents have been filed to show that the petitioners were enrolled in the employment exchanges of Uttarakhand on 23.08.2001 and 18.01.2002 respectively.

2.6 In para 4.12 of the petition, names of a few candidates, who were selected and were permitted regular training, have been given stating that they don't have any property in Uttarakhand. The petitioners were neither given show cause notice nor any opportunity before orally instructing them not to attend regular training. The petitioners challenged the order of their termination before the Hon'ble High Court by filing WPSS No. 1376/2002, Sudhir Kumar and another vs. State of Uttarakhand and others, which was allowed *vide* judgement and order dated 22.05.2008. The respondents were directed to allow the petitioners to continue to work (copy Annexure: A7). In compliance of order of the Hon'ble Court, respondent no. 3 issued appointment letter on 18.10.2008, whereby the petitioners were appointed w.e.f. 20.10.2008 as Constable in the respondent department (copy Annexure: A8). Since the petitioners belong to poor family and were in need of job, therefore, at the relevant point of time, they joined the services of the department without claiming any seniority or parity with the other appointees, who were appointed pursuant to the appointment list dated 17.04.2002.

2.7 The petitioners, after joining, were sent to undergo a training in which they were given stipend of Rs. 3,626/- per month, although they were entitled to salary treating them to be appointees of the year 2002 in pursuant to the selection list dated 13.05.2002. They made representations which were decided by respondent no. 4 *vide* order dated 09.08.2010. They have been denied full salary during the training period on the

basis of G.O. dated 11.05.2008. According to the petition, the said G.O. is not applicable to the petitioners. Copy of order dated 09.08.2010 has been brought on record as Annexure: A1.

2.8 Petitioners were not only entitled to full salary but also the seniority along with all consequential benefits from the date when, other similarly situated employees, namely, Puran Singh, Tej Pal, Lopan Kumar, Sandeep, Sanjeev, Ashok Kumar and Nawab Haider were appointed. They all were the residents of State of Uttar Pradesh. The same benefits which other employees are enjoying should have been granted to the petitioners on the ground that they have been found eligible in the selection list of 13.05.2002.

2.9 They should have been treated to be appointed in the year 2002 and are entitled to all the benefits from the date of their appointment as well as seniority from 13.05.2002. Although the order of the Hon'ble High Court is silent in this aspect, but nowhere it has directed the respondent department to appoint the petitioners afresh. It clearly gives direction to the respondent department to permit the petitioners to continue to work as such the petitioners are entitled for the benefits given to the similarly situated employees appointed in the year 2002.

2.10 The petitioners are not only entitled to full salary treating them to be employees of the selection year 2002 but are also entitled to seniority. According to the petition, the petitioners are subjected to hostile discrimination and are victims of double jeopardy because, on the one hand, the respondents have not paid them their salary pursuant to their selection and have not counted their seniority from 2002, although similarly situated persons are enjoying the same since 2002. The act of the respondents is not permissible in law. The judgment of the Hon'ble High Court relates their joining back to the year 2002. Thus, the petitioners are entitled to seniority as well as entire

arrears of salary *w.e.f.* 2002 inasmuch as the petitioners cannot be allowed to suffer for the wrong committed by the respondents.

3. Sri Rajkumar, petitioner no. 2 has filed affidavit and supplementary affidavit in support of the claim petition.

4. Relevant documents have been filed in support of the claim petition.

### **COUNTER AFFIDAVITS**

5. Claim petition has been contested by the respondents by filing W.S. Counter affidavit has been filed by Ms. Sweety Agarwal, S.S.P., Haridwar. Material averments contained in the claim petition have been denied in the C.A.

6. Additional C.A./ W.S. has been filed by Sri Rajeev Swaroop, the then S.S.P., Haridwar.

7. Relevant documents have also been filed in support of the C.A. and supplementary C.A.

8. Counter affidavit of Sri Rajeev Swaroop is on the fact that recruited Constables would be given stipend during training period as per O.M. dated 11.05.2006, issued by the Home Department and no seniority list is prepared when a Constable is promoted to the post of Head Constable.

### **EARLIER ROUND**

9. In earlier round of litigation before this Tribunal, the respondents were directed to decide the representation of the petitioner by a reasoned order. Such order was passed on 07.03.2018 by the Bench comprising of the then learned VC(J) and learned VC(A). The said order was challenged before the Hon'ble High Court. A review application was filed on behalf of the petitioners to review the order dated 07.03.2018. After

hearing learned Counsel for the parties, order dated 07.03.2018 was recalled and the claim petition was restored to its original number *vide* order dated 15.05.2023.

### **RIVAL SUBMISSIONS**

10. Sri Shashank Pandey, learned Counsel for the petitioners, assailed the orders impugned with vehemence and submitted that the petitioners are entitled to regular pay scale instead of stipend, inasmuch as they must be treated to be appointees of the year 2002 and not 2006 whereafter the G.O. of the Home Department was made applicable to the recruits/trainee Constables.

11. Sri Shashank Pandey, learned Counsel for the petitioners, further submitted that the petitioners should be given seniority *w.e.f.* 2002. They were not at fault if they were not permitted regular training at that point of time. They approached Hon'ble High Court, who directed the respondents to permit the petitioners to continue to work. The word 'continue' presupposes the fact that the petitioners are already in the service of the department and they should be permitted to continue to work. Further, similarly situated persons were treated in service of Uttarakhand Police whereas the petitioners have not been, until the judgement was given by the Hon'ble High Court. Not treating the petitioners at par with those persons whose names have been given in para 4.19 of the claim petition, amounts to hostile discrimination.

12. Learned A.P.O., on the other hand, placed reliance on G.O. dated 11.05.2006 to argue that earlier executive order dated 18.08.2001 was amended *w.e.f.* 11.05.2006 to say that the recruit-Constables would be given stipend during training period.

12.1 Learned A.P.O. also submitted that the Hon'ble High Court has nowhere directed in its order that the petitioners shall be given appointment *w.e.f.* 2002, therefore, the order of the Hon'ble Court will have effect only prospectively.

12.2 Learned A.P.O. further submitted that even if, for some reason, seniority is given to the petitioners *w.e.f.* 2002, they are not entitled to salary during the period when they did not work. They are not entitled to arrears of salary. Learned A.P.O. has made an endeavour to justify communication dated 09.08.2010 (copy Annexure: A1). He also submitted that the petitioners are not entitled to back-wages for the period they did not work, on the principle of 'No Work, No Pay'.

### **JUDGEMENT OF HON'BLE COURT**

13. A bare reading of order dated 22.05.2008, which was passed by the Hon'ble High Court in WPSB No. 1376/2002, Sudhir Kumar and another vs. State of Uttarakhand and others, is helpful in deciding the controversy in hand, to a large extent. The order reads as below:

"IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL

Writ Petition No. 1376 (S/B) of 2002

Sudhir Kumar and another. ....Petitioners

Versus

State of Uttarakhand and others.

.....Respondents

Sri Sharad Sharma, learned counsel for the petitioners.

Sri H.M. Raturi, learned Standing Counsel for the State of Uttarakhand.

Dated: May 22, 2008

Hon'ble P.C. Verma, J.

The dispute in the writ petition relates to cancellation of appointment order obtained by the petitioners on the basis

of domicile certificates issued to them on 15.01.2002 and 17.01.2002.

2. Domicile Certificates were issued to the petitioners following the Government Order Dated 18.08.2001. Government Order dated 18.08.2001 ceased to operate on issue of the Government order dated 20.11.2001 which provides that Domicile Certificate shall be granted only to those bonafide residents, who have been residing in the State of Uttarakhand from the last fifteen years. Admittedly, the petitioners do not fulfil that condition of Government Order. Therefore, their domicile certificates were wrongly issued.

3. A perusal of the Select List shows that at least seven persons have been selected and appointed, who are residents of State of U.P. and their names figures at serial no. 68, 76, 86, 129, 141, 166 and 171. This fact has been proved from the perusal of the Select List.

4. It is mentioned in the Advertisement that the candidate must be registered in Employment Exchange of State of Uttarakhand and registration in the Employment Exchange can only be made, if a candidate is domicile of State of Uttarakhand. Meaning thereby, only those candidates, who are belonging to State of Uttarakhand, shall be entitled to apply in pursuance to the Advertisement.

5. In the facts of the case narrated above, it is provided that if those seven persons, who are residents of State of U.P., as mentioned in the Select List (Annexure no. 3 to the writ petition) have been allowed to join and are working, petitioners shall also be allowed to continue to work.

6. With this direction, writ petition is disposed of finally. No order as to costs.”

*[Emphasis Supplied]*

## **DISCUSSION**

14. To recapitulate, pursuant to advertisement dated 24.12.2001, petitioners applied for the post of Constables in Uttarakhand Police from district Haridwar. They were called for physical test, which they qualified. They were called for written test, which also they qualified. They were then called for interview. Final list of selected candidates for district Haridwar was published on 17.04.2002. The name of petitioner no. 1 was shown at Sl. No. 156 and petitioner no. 2 was at Sl. No. 195

(Copy of list of selected candidates: Annexure- A 2). The petitioners along with other selected candidates went for general training for one week in the month of April, 2002.

15. The petitioners were not called for regular training. On 13.05.2002, S.S.P., Haridwar wrote a letter to District Magistrate, Haridwar, that although the petitioners were educated in State of Uttar Pradesh, but they were registered in the employment exchanges of Uttarakhand on 23.08.2001 and 18.01.2002 respectively. A reference of Govt. Orders dated 18.08.2001 and 20.11.2001 was given (Copy of letter dated 13.05.2002: Annexure- A 3). These G.Os. emphasize that the candidates should be permanent residents of Uttarakhand. According to these G.Os., only those persons would be given permanent residence proof, who are residents of Uttarakhand for the last 15 years (Copy of G.Os. dated 18.08.2001 & 20.11.2001: Annexure- A 4).

16. Director General of Police (Personnel) PHQ, Uttarakhand wrote a letter to all the Senior Superintendents of Police, Uttarakhand on 18.02.2002, that entire formalities regarding registration in the employment exchanges may be completed by 28.02.2002, so that the applicants may be considered for the selection commencing from 01.03.2002 ( Copy of letter dated 18.02.2002: Annexure- A 5).

17. Petitioners were enrolled in the employment exchanges on 23.08.2001 and 18.01.2002 respectively (Copy: Annexure- A 6). Similarly situated seven (07) Constables were called for regular training. They were, Sarvsri Puran Singh, Tej Pal, Lopan Kumar, Sandeep, Sanjeev, Ashok Kumar and Nawab Haider. Petitioners were orally instructed not to come for regular training. No show cause notice was given before that. Petitioners filed WPSS No. 1376/ 2002, which was allowed by the Hon'ble High Court *vide* judgment and order dated

22.05.2008. This Tribunal has quoted the said judgment of Hon'ble High Court *verbatim* in Para 13 of the judgment, copy of which has been enclosed as Annexure: A 7 to the petition.

18. Appointment letter was issued to the petitioners on 18.10.2008. They were appointed w.e.f. 20.10.2008 (Annexure: A 8). The petitioners were in need of job, at that point of time they joined the service without claiming (any seniority or) parity with other appointees, who were appointed pursuant to select-list dated 17.04.2002.

19. Since the petitioners have joined with the intervention of Hon'ble High Court, who was pleased to direct the respondents to permit the petitioners to continue to work. Select list has not been challenged. The petitioners shall, therefore, remain at the same position in which their names have been indicated in the select list dated 17.04.2002. *Inter-se* seniority of the Constables is not in dispute. Their placement is final. The fact that Sarvsri Puran Singh, Tej Raj, Lopan Kumar, Sandeep, Sanjeev, Ashok Kumar and Nawab Haider are similar to the petitioners and they were called for regular training and, accordingly, were appointed as Constables in Uttarakhand Police, has nowhere been denied in the pleadings of the respondents. It is cardinal principle of law that the State shall not discriminate similarly situated persons, unless there are cogent and permissible reasons for denying similar treatment. The respondents have neither controverted the pleadings of the petitioners in this respect nor have given any explanation that their case is different from those Constables, who were called for regular training. The order of the Hon'ble High Court nowhere gives direction to the respondent department to appoint the petitioners *afresh*. It clearly gives direction to the respondent department to permit the petitioners to continue to work. The word 'continue' presupposes that the petitioners are already in

the service of the respondent department. The order of Hon'ble High Court has attained finality.

20. Petitioners filed WPSS No. 942/ 2010 before the Hon'ble High Court of Uttarakhand, challenging the order dated 09.08.2010. Hon'ble Court granted them liberty to approach the Public Services Tribunal with a direction that if the petition is preferred within eight weeks, then the same will not be dismissed on the ground of limitation and laches and the same will be decided on merits in accordance with law. The respondents should not be permitted to sit over the judgments of the Hon'ble High Court. Petitioners are not at fault for not continuing with the respondent department in the year 2002, pursuant to the select-list. If they were not called for regular training, they cannot be blamed for the same. Had they been called for regular training, they would have continued in the service as Sarvsri Puran Singh, Tej Raj, Lopan Kumar, Sandeep, Sanjeev, Ashok Kumar and Nawab Haider were permitted to join after calling them for regular training. The petitioners are subjected to hostile discrimination, which is not permissible in law. They are entitled to seniority as per select-list of the year 2002.

21. The next point is about their salary during the period of training. In WPSS No. 1466/ 2011, Jagdish Ram vs. State of Uttarakhand, Hon'ble High Court of Uttarakhand has observed thus:

“2. A bare perusal of the said circular shows that there is a clear order that the period of training must be counted for pensionary benefit, yet there is again a clear order that for the purposes of increments the period of training shall not be counted for the reasons that during training constables get only a fixed pay. The petitioners have been agitating their cause for quite some time. The petitioners were also working in the police department of the erstwhile State of Uttar Pradesh and after the creation of new State of Uttarakhand under the Uttar Pradesh Reorganisation Act, 2000, the services of the petitioner have been allocated to new State of Uttarakhand. Their counterparts

in Uttar Pradesh are getting benefit by an order dated 8.4.2009 passed by a learned Single Judge of Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 24910 of 2006, wherein the period of training is to be counted (and is now being counted in U.P.).

3. In Uttar Pradesh there was also some confusion as to whether such period (i.e. a period of training undergone by the constables) should be counted in service and there was some communication which is reflected in the order dated 8.4.2009 of Hon'ble Allahabad High Court (passed in Civil Misc. Writ Petition No. 24910 of 2006) wherein the Superintendent of Police, Chitrakoot was directed to decide the matter in question in the light of Circular dated 8.11.1965. However, the police department refused to count the period of training in service. Consequently, the petitioners (i.e. constables in Uttar Pradesh) were constrained to file the writ petition and the said writ petition was allowed by the learned Single Judge of the Hon'ble Allahabad High Court, wherein the interpretation of the said circular dated 8.11.1965 was given as such:

“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 purpose of pension and post retirement benefits but no 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 scale.”

3. After hearing learned counsel for the parties, this Court is of the view that although order (November 8, 1965) specifically states that the period of training is a part of the service and to be counted for the period of pension but there is a specific exclusion of the benefit of any increment only, and there is no other exclusion. Therefore, the usual interpretation of the said circular dated 8.11.1965 would be that such a benefit is liable to be granted to the constable as has been held by Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 24910 of 2006. The interpretation of which would be that though the period of training, *inter alia*, not be counted for period of increment, but will be counted when entire period of service for any other benefit including the benefit of payment of higher pay-scale or promotional pay scale, as the case may be.”

*[Emphasis supplied]*

22. Petitioners have claimed seniority, which they are entitled to, as per the combined select-list, in the backdrop of facts, which the Tribunal has narrated above. In G.O. dated 31.03.2015, which has been issued by the Secretary, Home and has been addressed to Director General of Police, Uttarakhand (Copy: Annexure – A 12), the following has been mentioned:

“..... Writ petition No. 24910/ 2006.....the Interpretation of which would be that though the period of training, *inter alia*, not be counted for period of increment, but will be counted when entire period of service for any other benefit including the benefit of payment of higher pay-scale or promotional pay-scale, as the case may be.

The writ petition is allowed in the above terms with the direction to the respondents to count the period of training for every purpose, save the increment.”

[Emphasis supplied]

23. The petitioners would, therefore, be entitled to count their service *w.e.f.* 17.04.2002 for the purpose of seniority, length of service, benefit of payment of higher pay scale or promotional pay scale etc.

24. G.O. dated 18.08.2001, which provides for salary during the training period, was modified by the Principal Secretary, Home, *vide* O.M. dated 11.05.2006 (Annexure: R-3). Instead of full salary along with admissible allowances, the G.O. provided that henceforth the recruit-Constables will be eligible for stipend during training. It has been mentioned in the said G.O. dated 11.05.2006 that this will apply prospectively to the appointments of the future. The petitioners were not appointed after 11.05.2006. They were appointed as per select-list dated 17.04.2002, hence G.O. dated 11.05.2006 shall not be applicable to them.

25. An application had been filed on behalf of the petitioners on 28.09.2015 for direction, para 03 of which is relevant for consideration of the respondents. The same reads as below:

“3. That the Hon'ble High Court of Uttarakhand at Nainital in writ petition no 1466 of 2011 has decided the controversy and directed that in view of the government order dated 08.11.1965 which provides that the period of training is a part of service and to be counted for the period of pension but there is specific exclusion of the benefit of any increment only and there is no other exclusion. Therefore, the usual interpretation of the circular dated 08.11.1965 would be that such a benefit is liable to be granted to the constable as has been held by the Hon'ble Allahabad High Court. The Hon'ble High Court has further ordered that interpretation of which would be that though the period of training *inter-alia*, not be counted for increment but shall be counted as entire period of service for any other benefit including the benefit of payment of higher pay scale as the case may be.”

[Emphasis supplied]

26. In the instant case, as has been mentioned above, the petitioners were appointed as per select-list dated 17.04.2002, hence G.O. dated 11.05.2006 will not be applicable to them. They will be entitled to salary (but for the increment) for the period of training and the same will be governed by G.O. dated 18.08.2001, which has been referred to by the Home Department in its O.M. dated 11.05.2006.

27. Petitioners are definitely entitled to seniority as per the select list dated 17.04.2002, which similarly situated persons namely, Sarvsri Puran Singh, Tej Raj, Lopan Kumar, Sandeep, Sanjeev, Ashok Kumar and Nawab Haider have been given as per their placement in the seniority list. It is true that the petitioners are not domicile of Uttarakhand but their names have been registered in the employment exchanges of Uttarakhand on 23.08.2001 and 18.01.2002 respectively. The fact of the matter is that similarly placed persons, who were domicile of Uttar Pradesh, have been appointed as Constables in Uttarakhand, hence the State cannot be permitted to discriminate the petitioners on this ground, which is the basis of judgment of the Hon'ble High Court. Moreover, it is also debatable whether any State can impose condition of domicile in the matter of public employment or not. However, the same is not the subject matter of discussion before this Tribunal. In their pleadings, respondents have nowhere stated that the Constables, whose names have been mentioned in para 4.19 of the claim petition are not the residents of the State of U.P. and they were not allowed to join and are not working with the Uttarakhand Police.

28. Hon'ble High Court has, *vide* its decision dated 22.05.2008 in WPSB No. 1376/ 2002, concluded the dispute by directing that if those seven persons, who are residents of State of U.P., as mentioned in the Select List (Annexure no. 3 to the writ petition) have been allowed to join and are working,

petitioners shall also be allowed to continue to work. In the absence of any challenge to such decision, the same has attained finality.

29. Article 14 of the Constitution of India provides that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Equal protection means the right to equal treatment in similar circumstances [AIR 1955 SC 795, AIR 1952 SC 75]. There should be no discrimination between one person or another, if their position is same [AIR 1951 SC 41]. Action must not be arbitrary, but must be based on some valid principle which itself must not be irrational or discriminatory [AIR 1979 SC 1628, AIR 1980 SC 1992]. The principle does not take away from the State the power of classifying persons for legitimate purposes [AIR 1951 SC 318]. The State is very much competent to exercise its discretion and make classification [(1997) 6 SCC1]. It amounts to denial of equal protection when there is no reasonable basis for the differentiation [AIR 1953 SC 1991, AIR 1957 SC 877, AIR 1959 SC 609].

30. It may be noted here, at the cost of repetition, that before issuing Office Order dated 11.05.2006, all the trainee Constables (recruits) were entitled to full salary during the training period. It was only after 11.05.2006 that the earlier O.M. dated 18.08.2001 was amended. The petitioners should be treated to be in service since 17.04.2002. O.M. dated 11.05.2006 is not applicable to them. It is O.M. dated 18.08.2001, which will be applicable to them. The order dated 22.05.2008, passed by the Hon'ble High Court in WPSB No. 1376/2002, in this respect, relates back to 17.04.2002. They were given joining by the respondent department as per the directions dated 22.05.2008.

## INFERENCES

31. To sum up, the petitioners should be treated in service since 17.04.2002 and they should be given full salary during the training period, as G.O. dated 11.05.2006 shall run only prospectively. The petitioners should be given seniority as per the select list dated 17.04.2002, as there is no dispute about *inter-se* seniority. Order dated 09.08.2010, whereby the respondents have denied salary to the petitioners during training period calls for interference.

32. The impugned letter dated 09.08.2010, issued by Respondent No.4 (Annexure: A-1 to the claim petition), in respect of the petitioners, should be set aside along with its effect and operation, in view of the decision rendered by the Hon'ble High Court of Uttarakhand in WPSS No. 1466/ 2011, Jagdish Ram vs. State of Uttarakhand (Copy: Annexure- A 1) and order dated 08.04.2009, passed by the Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No. 24910/ 2006, a reference of which has been given in G.O. dated 30.03.2015 (Annexure: A-12), issued by the Secretary, Home, addressed to the Director General of Police, Uttarakhand, which provides that though the period of training shall not be counted for period of increment, but will be counted in entire period of service for any other benefit including the benefit of payment of higher pay scale or promotional pay scale, as the case may be. In other words, period of training shall be counted for every purpose, save the increment.

33. Respondents should also count the service of the petitioners w.e.f. 17.04.2002 for all the purposes, including seniority, treating them to be in service vide combined Select List dated 17.04.2002 (Annexure: A-2), in which the names of petitioner no.1 and petitioner no. 2 find place at Sl. No.156 and at Sl. No. 195 respectively. The Hon'ble High Court, in its judgment dated 22.05.2008, has used the word 'continue', which

presupposes that the petitioners are already in service. Similarly situated persons are continuing in service as per select-list dated 17.04.2002. Petitioners have been subject to hostile discrimination on this score.

34. Ld. Counsel for the petitioners submitted that the claim petition is very old, has been registered as 49/SB/2014, hence, the same may be decided by Single Bench of the Tribunal on priority.

### **DIRECTIONS**

35. The impugned letter dated 09.08.2010, issued by Respondent No.4 (Annexure: A-1 to the claim petition), is set aside *qua* petitioners, along with its effect and operation. Although petitioners' period of training will not be counted for the purpose of increment, but (the same) will be counted as period of service for any other benefit including the benefit of payment of higher pay scale or promotional pay scale, as the case may be. In other words, period of training shall be counted for every purpose, save the increment.

Respondents are also directed to count seniority of the petitioners as per combined select-list dated 17.04.2002 (Annexure: A-2). It will be counted as period of service, *inter alia*, for the benefit of payment of higher pay scale or promotional pay scale, as the case may be. Similarly situated persons are continuing in service as per select-list dated 17.04.2002, are getting every (service) benefit, there is no dispute about *inter-se* seniority and petitioners have been subjected to hostile discrimination, at least, as against seven (07) similarly situated Constables, on this score.

Last but not the least, the Tribunal leaves it to the wisdom of the Govt./ party respondent no.1, to decide objectively, whether to grant arrears of salary to the petitioners

for the period they were (orally) not permitted to work (without their fault)', unlike similarly situated group of 'favoured seven (07), who were permitted to work and continue, or to deny the same on the principle of 'No Work, No Pay'. Respondent No. 1 is requested to consider the same taking holistic view of the matter, without any unreasonable delay

36. The claim petition thus stands disposed of. No order as to costs.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 26<sup>th</sup> March, 2024*  
*DEHRADUN*

*VM/RS*