

**Court No. - 20**

**Case :-** WRIT - A No. - 8113 of 2023

**Petitioner :-** Prashant Kumar Pno. No. 172260080 And 12 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Home U.P. Shashan Sectt. Lucknow And 2 Others

**Counsel for Petitioner :-** Suyash Tripathi

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manish Mathur,J.**

1. Heard Mr. Suyash Tripathi, learned counsel for petitioners and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed challenging order dated 22.12.2015 so far as it restricts payment of stipend to petitioners during the training period after appointment on direct recruitment of petitioners on the post of Sub-Inspector. Further prayer for payment of arrears of leave salary for the period of aforesaid training in addition to stipend has been sought.

3. It has been submitted that earlier similar petitions have been filed before this Court which was dismissed by means of judgment and order dated 15.11.2019 where against Special Appeal No.169 of 2020 (Alok Kumar Singh & Ors. versus State of U.P. & Ors.) was filed and was allowed by means of judgment and order dated 08.09.2021. It is submitted that in the aforesaid judgment, it has been clearly held that petitioners such as present petitioners who were appointed on direct recruitment on the post of Sub-Inspector were entitled to leave salary for the period they underwent training after appointment with such leave salary being in addition to the stipend they were paid. The petitioners were also held entitled to the Government Order of 1965 followed by Circular of 1979.

4. It is submitted that the aforesaid judgment was thereafter challenged in Special Leave Petition No.798 of 2022 which was dismissed vide order dated 04.02.2022.

5. Learned State counsel however submits that although undisputedly the aforesaid judgment rendered by Division Bench of this Court was upheld in the aforesaid Special Leave to Appeal but subsequently the State Government took a decision that the said benefits would be applicable only to petitioners of the said petition and therefore petitioners are not entitled for the same.

6. Upon consideration of submissions advanced by learned counsel for petitioners, learned State counsel as well as upon a reading of the aforesaid judgment rendered by Division Bench of this Court in Special Appeal No.169 of 2020, it is quite evident that the aforesaid dispute has already been adjudicated upon by judgment and order dated 08.09.2021 passed in Special Appeal No.169 of 2020 which has been affirmed by dismissal of Special Leave to Appeal.

7. A perusal of pleadings made in the petition make it evident that petitioners' case is squarely covered by the aforesaid judgment and order dated 08.09.2021 even with regard to challenge being raised to order dated 22.12.2015. The operative portion of order dated 08.09.2021 is as follows:-

*"Accordingly, we set aside the judgment of the learned Single Judge and direct the respondents to extend the benefit, as envisaged in the Government Order of 1965 followed by circular of 1979 which otherwise has been allowed by the Apex Court in its judgment dated 28.08.2019. The petitioners case would be considered in the light of the Government Order of 1965 followed by the circular of 1979 without being guided by the subsequent clarified order dated 22.12.2015. The said circular runs counter to the circular of the year 1979. Without its supersession, this cannot be applied. "*

8. So far as submissions of learned State Counsel is concerned that benefit of the judgment would be applicable only to petitioners of the said petitions and appeals, it is quite evident from a reading of the judgment and order dated 08.09.2021 that no such restriction has been indicated by the Division Bench in the aforesaid judgment. It is not for the State Government to sit in appeal over judgments rendered by Constitutional Courts and to restrict their operation in the manner in which it has been done.

9. Accordingly petitioners are found to be similarly placed and entitled to be granted benefit of judgment and order dated 08.09.2021 and therefore the opposite parties are directed that petitioners' case would be considered in light of Government Order/ Circular dated 16.09.1965 followed by the Circular dated 03.11.1979 regarding grant of leave salary ignoring the order dated 22.12.2015 since it runs counter to the circular of year 1979.

10. Accordingly, petition succeeds and is allowed. Parties to bear their own costs.

**Order Date :- 27.10.2023**

kvg/-