
(2003) 04 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 8212 of 1992

Dr. Ram Surat Chaube

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 AWC 3964

Hon'ble Judges : V.M. Sahai, J; Mukteshwar Prasad, J

Bench : Division Bench

Advocate : P.N. Tripathi, for the Appellant;

Final Decision : Partly Allowed

Judgement

Mukteshwar Prasad, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner has prayed for issuance of a writ of certiorari quashing the orders dated 22.2.1992 and 31.10.1991 (Annexures-15 and 12 to the writ petition respectively) and for issuance of a direction in nature of mandamus commanding the Respondents not to recover the amount in question from the Petitioner.

2. We have heard learned Counsel for the Petitioner Sri P. N. Tripathi and learned Standing Counsel at length and perused the record.

3. The Petitioner has challenged the impugned orders passed by the Respondents for recovery of non-practicing allowance and house rent allowance allegedly drawn in excess by the Petitioner. At the time of hearing of the petition, Sri Tripathi gave a statement to the effect that he is confining his petition only with regard to non-practicing allowance and no other relief is being pressed. Therefore, the question is whether the Respondents can recover the non-practicing allowance drawn by the Petitioner from 11.12.1981 to 16.2.1991.

4. Admittedly, the Petitioner was appointed as Principal in Sri Durgaji Homeopathic Medical College, Chandeshwar, Azamgarh, w.e.f. 1.10.1971. In the

year 1981, nine Homeopathic Medical Colleges of the State including Tilakdhari Homeopathic Medical College and Hospital, Jaunpur as well as Sri Durgaji Homeopathic Medical College and Hospital, Chandeshwar, Azamgarh, were provincialised by U.P. Act No. 21 of 1981, which came into force w.e.f. 11.12.1981.

5. Since the date of his appointment, the Petitioner was drawing his pay as Principal of Homeopathic Medical College in the prescribed pay scale along with dearness allowance. He was also getting non-practicing allowance at the rate of 25% of the basic pay. The Petitioner was transferred to Tilakdhari Homeopathic Medical College and Hospital, Jaunpur and on the basis of last pay certificate, he was drawing pay, dearness allowance as well as non-practicing allowance in accordance with the original appointment letter.

6. Admittedly, after provincia-lisation of the Homeopathic Medical Colleges of the State, the teaching and non-teaching staff of the Medical Colleges became the State employees and were entitled to the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as they would have held if this Act had not come into force and shall continue to do so, unless and until their employment is duly terminated or until their remuneration, terms and conditions are duly altered by the State Government.

7. Learned Counsel for the Petitioner argued that the Petitioner has rightly drawn the non-practicing allowance and the impugned orders passed by the Respondents are liable to be quashed. He further contended that the Principal of the Homeopathic Medical College, Jaunpur, sought a direction vide letter dated 26.2.1983 (Annexure-3 to the writ petition) from the Director, Homeopathy, U.P. whether the Petitioner was entitled to non-practicing allowance or not. The Director vide his letter dated 17.3.1983 (Annexure-4 to the writ petition) directed the Principal to pay non-practicing allowance to the Petitioner, as provided in G.O. No. 8502 seka-9/panch-81-1083/80, dated 11.12.1981. On the basis of the letter sent by the Director, Homeopathy, the Petitioner was drawing non-practicing allowance. It was further argued by the learned Counsel for the Petitioner that the Respondents are mis-interpreting the Government order dated 25.8.1987 (Annexure-5 to the writ petition), whereby the payment of all other allowances was stopped. On the other hand, learned Standing Counsel vehemently urged that para 4 of the Government order dated 25.8.1987 clearly provides to stop payment of non-practicing allowance also until further orders.

8. After having perused the aforesaid Government Order dated 25.8.1987, we find force in the contention of the learned Standing Counsel. As provided in para 4 of the Government order, the payment of non-practicing allowance to the Petitioner and others was stopped by the State Government w.e.f. 25.8.1987 and this situation continued till 16.2.1991. Admittedly, the State Government vide Government order dated 16.2.1991 (Annexure-11 to the writ petition) permitted the teaching staff including the Petitioner to practice after working hours. It is,

therefore, obvious that the Petitioner was not entitled to draw non-practicing allowance between 25.8.1987 and 16.2.1991 and any amount drawn by him as non-practicing allowance is liable to be recovered from him.

9. Learned Standing Counsel has submitted that w.e.f. 11.12.1981 till 16.2.1991, no non-practicing allowance was payable to the Petitioner. Therefore, the writ petition is liable to be dismissed.

10. In view of the letter of the Principal of the college in question dated 26.2.1983, letter of the Director Homeopathy dated 17.3.1983, directing the Principal to pay non-practicing allowance to the Petitioner as well as representations of the Petitioner dated 27.10.1987, 21.3.1988, 1.9.1989, 22.1.1990 and 12.7.1990, we are clearly of the opinion that the Petitioner has rightly drawn the non-practicing allowance up to 24.8.1987 and Respondents are not entitled to recover the same from the Petitioner. It is noteworthy that the Petitioner repeatedly requested the Director Homeopathy to pay non-practicing allowance or pass clear orders for payment of non-practicing allowance. It appears that the representations made by the Petitioner were not decided by the authorities and no specific orders rejecting his representations or for payment of non-practicing allowance were passed.

11. For the aforesaid reasons, we find that this petition must succeed partly.

12. The writ petition is partly allowed and the impugned orders dated 31.10.1991 and 22.2.1992 are quashed to this extent only that the Respondents are not entitled to recover the non-practicing allowance already drawn by the Petitioner from the date of provincialisation to 25.8.1987. Costs on parties.