

(2013) 02 AHC CK 0324

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28101 of 2010 Connected with C.M.W.P. No. 31066 of 2010

Dr. Ravindra Kumar Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Citation : (2014) 4 AWC 3730 : (2014) 141 FLR 152 : (2014) 2 UPLBEC 1295

Hon'ble Judges : V.K. Dixit, J;D.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh and Virendra Kumar Dixit, JJ.—We have heard learned Counsel for the petitioners as well as learned Standing Counsel and perused the record. With the consent of the parties" Counsel, we proceed to decide both the writ petitions finally at admission stage. The petitioners were appointed as Medical Officer (Ayurved) under Employees State Insurance Scheme (in short hereinafter referred as the Scheme) and resumed duties in the different hospitals at Ghaziabad and Kanpur.

2. According to petitioner"s Counsel apart from regular monthly salary they were being paid non-practicing allowance every month in lieu of certificate provided by them to the effect that they have not been indulged into private practice.

3. Controversy arose on account of letter dated 30.7.1991 sent to the State Government seeking clarification with regard to payment of non-practicing allowance to Ayurvedic/Homeopathy Medical Officers under the scheme. The Government by an order dated 31.3.1992 (Annexure-7 to the writ petition) opined that there is no justification to pay non-practicing allowance to Ayurvedic/Homeopathy Medical Officers working under the Scheme in the State of U.P.

4. Feeling aggrieved with the decision of the State Government the petitioners have approached this Court under Article 226 of the Constitution of India

whereby initially an interim order was passed for payment of non-practicing allowance. However, writ petition decided finally by judgment and order dated 12.7.2006 permitting the petitioner to prefer representation to the State Government and State Government was directed to decide the same. The State Government by impugned order dated 12.3.2010 had rejected the representation. It may be noted that the Government Order dated 24.8.2009 (Annexure-18 to the writ petition) specify the rate of payment of non-practicing allowance to the Medical Officer of Medical and Health Department.

5. While assailing the impugned order it has been submitted by the petitioner's Counsel that reliance placed by the State Government on Rule 15 (e) of the Employees' State Insurance (Medical Benefit) Rules, 1953 (in short hereinafter referred as 1953 Rules) is an incident of misleading of the rule. The submission is that the State Government had failed to appreciate the rules in its real perspective. The entire case of the petitioner hinges on interpretation of Rule 15. It shall be appropriate to reproduce Rule 15 of 1953 Rules in its totality as under:--

15. Provision of alternative arrangements--

Where there is not an adequate number of Insurance Medical Practitioners available within a reasonable distance the State Government shall provide general medical services to insured person either:--

(a) by setting up State Insurance Dispensaries for the treatment of insured persons, staffed by full-time or part-time Insurance Medical Officer;

(b) by making suitable arrangements for a mobile dispensary to visit a central spot near the places of residence of insured persons;

(c) An Insurance Medical Officer shall receive such allowances and at such rates as may be sanctioned from time to time for medical officers of the State Government on similar grades in the localities in which they are stationed. An Insurance Medical Officer shall be entitled to leave and leave salary under the leave rules may, from time to time, be applicable to other similar State Government servants on similar salaries.

(d) An Insurance Medical Officer shall be entitled to travelling allowance for journeys performed on official duties on the scale laid down in the State Government rules applicable to medical officers of the State Government on similar salaries.

(e) A full-time Insurance Medical Officer shall not undertake private practice.

(f) An Insurance Medical Officer shall be subject to such other conditions of service as may be fixed by the State Government, in consultation with the Corporation.

(g) Notwithstanding anything contained in sub-rules (b) to (e), the pay, allowance and other conditions of service of an Insurance Medical Officer shall, if

he is a person already in the service of the State Government be such as may be determined with the consent of the Corporation by the State Government by a general or special order.

6. A plain reading of the Rule 15 reveals that under sub-rule (e) of Rule 15 restriction has been imposed on the private practice of the Medical Officers. Sub-rule (c) of Rule 15 further provides that the pay allowances and other conditions of the services of Insurance Medical Officers shall be same as of the Medical Officers serving in the State Government and determined with the consent of Corporation by the State Government by general or special order.

Sub-rule (c) has got positive element and unless there is specific decision with regard to non-payment of non-practicing allowances in terms of rule (supra) Ayurvedic Medical Officers shall be entitled for non-practicing allowance. It appears that Insurance Medical Officer shall entitle to all allowances which is being applicable to Medical Officers serving in State Government in its different branches including Allopathic.

Sub-rule (e) does not differentiate between Allopathy, Ayurvedic and Homeopathic Medical Officers. It is equally applicable to Medical Officers serving the Insurance Hospital in all three branches. Similarly sub-rule (g) and other provision of Rule 15 does not differentiate between Ayurvedic, Homeopathic and Allopathic medicines.

7. Medical Officer means the Medical Officer engaged in all three branches of the Insurance Hospitals or the State Government. Allowances means all allowances including non-practicing allowance.

In Black's Law Dictionary, Ninth Edition, the word allowance has been defined as under:--

Allowance-A share or portion, esp. of money that is assigned or granted.

In The Law Lexicon by P. Ramanatha Aiyar, 2nd Edition, the word "allowance" has been defined as under:--

Allowance-Something given as a compensation, abatement, or deduction; a portion or a gift or gratuity to a child or other dependent; the sanction or approbation of the Court to certain acts; settlement; to put upon allowance; to restrain or limit to a certain quantity of provision or drink. Used in such terms (as) allowance of a specified amount as alimony Pendente lite; special allowance for costs in taxation; allowance for the maintenance of one's wife and children; allowance to insolvent-debtors etc.

8. In view of dictionary meaning and definition (supra) the allowances shall include non-practicing allowance. Admittedly, petitioners have been paid all allowances except non-practicing allowance. There appears to be no reason to deny the payment of non-practicing allowance to the petitioners where rule does not distinguished between Allopathy, Homeopathy and Ayurvedic Medical Officer.

9. Hon''ble Supreme Court by catena of judgments held that while interpreting any section of a statute, every word and provision should be looked into in context to which it is used and not in isolation vide *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, *Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore*, *A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh*, *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, *Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.*, *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, .

10. Accordingly Rule 15 of Rules 1953 should be read as a whole. State Government committed substantial illegality while reading sub-rule (e) of Rule 15 in isolation. Rule 15 should be read conjointly along with sub-rule (c) which provides that Insurance Medical Officer shall receive such allowances and at such rate as may be sanctioned from time to time for Medical Officers of the State Government on similar grades in the locality in which they are stationed. In case sub-rule (c) and sub-rule (e) of Rule 15 is read conjointly, all Medial Officers (Ayurvedic, Homeopathic or Allopathic) of the Scheme shall be entitled for non-practicing allowances for the reason that it is provided to Medical Officer working in Provincial Medical and Health Services. It may be noted that by notification dated 20.8.1992 the Allopathic Medical Officers of the Government has been provided non-practicing allowances. U.P. Government Doctors (Allopathic) Restriction on Private Practice Rules, 1983 (in short, 1983 Rules) prohibits the Medical Officer of the State Government to indulge into private practice. Rule 4 of the 1983 Rules (supra) provides payment in lieu of private practice. For convenience Rule 4 of the 1983 Rules is reproduced as under:--

4. Payment in lieu of private practice.--(1) In lieu of private practice a Government doctor shall be paid such amount, by way of non-practising pay or allowance or both, as the Government may specify from time to time:

provided that non-practising pay or allowance, referred to in this sub-rule shall not be payable to:

(a) a Government doctor who--

(i) does not possess M.B.B.S., degree or B.D.S. or L.S.M.F. (LMP) diploma,

Or

(ii) is not entitled to be registered by the Indian Medical Council/Indian Dental Council, or

(iii) is debarred by the Indian Medical Council/Indian Dental Council from doing private practice;

(b) (i) Director and Addl. Director, Medical, Health and Family Welfare;

(ii) Director and Addl. Director, Medical Education and Training; and

(iii) Principals of the State Medical Colleges.

(c) an incumbent of a post for which M.B.B.S. degree or B.D.S. or L.S.M.F. (LMP) diploma qualifications are not essential.

11. Since, State Government had provided non-practising allowance in pursuance to Rules framed for the purpose to the Medical Officers at the thrust of sub-rule (c) of Rule 15 of 1953 Rules the Medical Officers working in the State Insurance Hospital shall be entitled for non-practicing allowances. Right accrues to the Medical Officers of the Insurance Hospitals is statutory and by fiction of law they shall be entitled for non-practicing allowance. Allowances given to Medical Officer working in the State Government which includes non-practicing allowance shall be available to Medical Officers working in State Insurance Hospitals in pursuance to sub-rule (c) of Rule 15.

12. Attention of the Court has not been invited towards any provision, rule or regulation under which the Medical Officers which includes Ayurvedic, Homeopathic and Allopathic working in the State Insurance Hospital may be deprived from non-practicing allowances. The language of Rule 15 (supra) of 1953 Rule is clear and unambiguous. No other meaning may be given except that the insurance Medical Officers shall entitled for all such allowances and at such rate which is being paid by the State Government to the Medical Officers of similar grade working in the vicinity. It is not disputed that all Medical Officers working in the Government Hospital at Ghaziabad and Kanpur are being given non-practicing allowances subject to furnishing of certificate that they are not indulged into private practice.

13. While passing the impugned order Government failed to apply mind to the contents of Rule 15 in its totality. The Government has taken into account sub-rule (e) of Rule 15 and not sub-rule (c) thereof. The State Government had failed to apply mind to Rule 15 in its totality. Hence, impugned order seems to suffer from non-application of mind as well as voice of arbitrariness. The writ petitions deserve to be allowed. In view of above, writ petition are allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 12.3.2010 as contained in Annexure 14 to the writ petition and the order dated 30.3.2010 as contained in Annexure-15 to the writ petition with all consequential benefits. The State Government shall ensure the payment of non-practising allowances to all the Medical Officers including the petitioners whose services are governed by 1953 Rules, including Ayurvedic, Allopathic and Homeopathic Medical Officers.

A further writ in the nature of mandamus is issued commanding the Government to re-consider the petitioners' case for payment of non-practicing allowance keeping in view the observation made in the body of the present judgment and pass a fresh order, expeditiously, say within a period of three months from the date of receipt of a certified copy of the present order.

The writ petitions are allowed accordingly. No order as to costs.