

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 2308/2012 & W.P.(C) No. 11581/2009**

% **31st July, 2013**

W.P.(C) No. 2308/2012

DR. R. UMA Petitioners

Through: Mr. Zeyaul Haque, Advocate.

VERSUS

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS.

..... Respondents

Through: Dr. Prabhat Kumar and Ms. Purna
Kumari, Advocates for R-2 and 3.

Mr. D. Rajeshwar Rao and Mr.
Gautam and Mr. Chanranjeet Singh,
Advocates for R-4.

AND

W.P.(C) No. 11581/2009

ASHA RANI Petitioner

Through: Mr. Zeyaul Haque, Advocate.

VERSUS

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS.

...Respondents

Through: Vikram Aditya and Mr. Narayan,
Adv. for Mr. Sachin Datta, CGSC for
R-1.

Ms. Sana Ansari, Adv. for Ms.
Zubeda Begum, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by Dr. R.Uma impugning the demand letter dated 18.2.2012 issued by the respondent no.4/employer whereby the petitioner was asked to refund an amount of Rs. 2,72,774/- alongwith interest, failing which, legal proceedings were to be initiated against the petitioner. Respondent no.4 claimed recovery because the amount of Rs.2,72,774/- was paid in excess to the petitioner by granting the petitioner non-practicing allowance although after implementation of 5th Pay Commission Report, total emoluments did not include non-practicing allowance (NPA).

2. The General Secretary of the respondent no.4 was written a letter dated 24.4.2009 by the Director of Family Welfare Government of NCT of Delhi (respondent no.1) that in accordance with the Rule 7(D) of the Revised Pay Rules 1997 (5th Pay Commission) in case of Medical Officers who are in receipt of non-practicing allowance, the term existing emoluments shall

not include NPA. Therefore, it is clear that on granting higher pay packages to employees by implementation of the 5th Pay Commission Report, the non-practicing allowance of medical officers were however, not to be included in the pay packages.

3. The issue before me is that whether respondent no.4 is entitled to make recoveries of the amount of Rs. 2,72,774/-.

4. The Supreme Court in a recent judgment of *Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. 2012(8) SCC 417* has held that once excess payment is made to the employee, every employer has a right to recover the excess payment on the principle of restitution under Section 72 of the Contract Act, 1972. Supreme Court has said that with respect to public monies neither the person who has illegally received excess amount and nor the person who pays it would have any personal interest, however, that should not be meant that public fund should go astray. Para 14 of the said judgment is relevant and which emphasized the aspect of money being tax payer's money, and the same reads as under:-

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the Government officers, may be due to various reasons like negligence,

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carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment." (emphasis added)

5. Therefore, once it is found that petitioner has received excess amount, that amount can be recovered by the respondent no.4.

6. The issue is whether the petitioner is entitled to non-practicing allowance as is being claimed, and if the petitioner is entitled to non-practicing allowance and that amount has not been received illegally and therefore no recovery can be made by the respondent no.4 and on which aspect I have already held against the petitioner as stated above. Counsel for the petitioner in support of the arguments relies upon a Division Bench judgment of this Court in the case of ***Delhi Administration & Ors. Vs. M.P. Singh and Ors.*** LPA No. 54/1992 decided on 18.11.2005 to canvass the proposition that non-practicing allowance was payable in terms of the circular of the Delhi Administration dated 9.3.1972.

7. In my opinion, the arguments urged on behalf of the petitioner carry no weight because the Division Bench in the case of ***M.P. Singh (supra)*** was

dealing with the issue of 4th Pay Commission recommendation and non payments to doctors in terms of the 4th Pay Commission recommendation with regard to dearness allowance and NPA. There was no issue before the Division Bench of the terms of implementation of the subsequent 5th Pay Commission Report and as per which, after grant of increased pay-scales, non-practicing allowance of doctors has been withdrawn. The judgment therefore relied upon by the petitioner will have no application in the facts of the present case once there is a specific direction at the time of increasing of pay-scales as per the Report of the 5th Pay Commission that doctors will not be entitled to non-practicing allowance.

8. There is therefore no merit in the writ petition and the same is accordingly dismissed, leaving the parties to bear their own costs.

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Counsel for the parties state that the present writ petition raises identical issues as has been decided in W.P.(C) No. 2308/2012 and only the amount is different. Adopting the ratio of the judgment in W.P.(C) 2308/2012, this writ petition is also therefore dismissed, leaving parties to bear their own costs.

JULY 31, 2013

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VALMIKI J. MEHTA, J.