

Court No. - 8

Case :- WRIT - A No. - 4898 of 2023

Petitioner :- Dr. Jagdish Prasad Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Medical And Health, Lucknow And 2 Others

Counsel for Petitioner :- Hari Prasad Gupta, Durgesh Kumar Verma

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Hari Prasad Gupta, learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the State.
2. Present petition under Article 226 of the Constitution of India has been filed impugning the order dated 03.02.2023, whereby the order for recovery of Rs.78,496/- from the petitioner in pursuance to the non practicing allowance given to him, has been directed to be recovered from his pension.
3. The petitioner was appointed on the post of Medical Officer on 21.06.1967 in U.P. Medical and Health Services. The petitioner demitted office from the post of Director General, Medical Health on 31.08.2004 on attaining the age of superannuation.
4. After completing the necessary formalities on 11.11.2005, Director, Pension issued pension payment order whereby Rs.78,496/- was withheld for recovering Rs.1,38,498/- non practicing allowance illegally paid to the petitioner. On one pretext or the other, the petitioner could not allow the respondents to recover Rs.78,496/- till date, and finally vide impugned order, it has been directed to recover the amount from his pension.
5. The petitioner had challenged The U.P. Government Doctor (Allopathic) Restriction on Private Practice Rules, 1983, whereby non practicing allowance is not admissible to the petitioner in the Writ Petition No.5887(SS) of 2022. In the aforesaid writ petition following prayers have been made:-

"(i) Issue suitable order or direction setting aside the Clause 4(B) of the U.P. Government Doctors Allopathic Restriction of Private Practice Rules, 1983 (copy whereof has been annexed as annexure No.1 to the writ petition).

(ii) Issue suitable order or direction setting aside the Rule 1(2) of the U.P. Government Doctors Allopathic Restriction of Private Practice (second amendments) Rules, 2005 (copy whereof has

been annexed as annexure No.2 to the writ petition).

(iii) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 13.3.2021 (copy whereof has been annexed as annexure No.3 to the writ petition) whereby the opposite parties rejected the claim of the petitioner who extend the benefit of N.P.A. at the rate prescribed time to time.

(iv) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to add and pay the N.P.A. part of pay/ allowances in the post retiral benefits of the petitioner and revise the pension of the petitioner ensuring the payment of arrears at the rate prescribed by the Government time to time with interest.

(v) Issue a writ order or direction in the nature of mandamus commanding the opposite parties pay the difference of pension with arrears and also refund the N.P.A. part of the amount deducted from the gratuity of the petitioner.

(vi) Any other writ, order or direction as the Honble Court may deem fit and proper and to award the cost of the petition to the petitioner. Allow this writ petition with costs throughout."

6. In view of the aforesaid fact, the petitioner has already sought prayer for quashing the order dated 13.05.2021, whereby non practicing allowance of Rs.78,496/- was directed to be recovered from him. This subsequent writ petition for the same cause of action, is not maintainable. The petitioner has got no relief so far from the Division Bench.

7. This writ petition being wholly misconceived, is hereby **dismissed.**

(Dinesh Kumar Singh, J.)

Order Date :- 12.7.2023
prateek