

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Civil Writ Petition No.13457 of 2018

Date of Decision: January 31st, 2020

Dr. Tapinder Jot @ Jyoti Kaushal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajvinder Singh Bains, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 08.02.2017 (Annexure P-1) passed by the Secretary, Government of Punjab, Health and Family Welfare Department, whereby on the basis of certain observations alleged to have been made in the order/judgment dated 12.10.2015 (Annexure P-6) passed by the State Consumer Disputes Redressal Commission, Punjab, it has been concluded that the petitioner had given treatment to Ajaib Singh for which he had issued a prescription slip and, therefore, would have taken some charges for the same, thus, declining him the release of non-practicing allowance which was stopped in May 2011 on the basis of a complaint filed by one Ajaib Singh before the District Consumer Disputes Redressal Forum, Barnala.

2. It is the contention of learned counsel for the petitioner that the petitioner was working as Civil Surgeon, DMC, Barnala. At the relevant time, the petitioner was working as Chief Medical Officer at Civil Hospital, Barnala, when the non-practicing allowance of the petitioner was stopped

on the basis of the complaint which was filed by one Ajaib Singh before District Consumer Disputes Redressal Forum, Barnala. The said complaint was dismissed on 07.04.2011 with costs. Appeal was preferred by the said complainant before the State Consumer Disputes Redressal Forum, which dismissed the said appeal on 12.10.2015 (Annexure P-6). On a representation submitted by the petitioner for release of the non-practicing allowance stopped since May 2011, who was by then working as Deputy Medical Commissioner, Barnala, the case was recommended to the Director, Health and Family Welfare, Punjab on 23.05.2016 (Annexure P-9). The Director forwarded the claim of the petitioner as projected in the application and forwarded by the Civil Surgeon, Barnala, to the Secretary, Department of Health and Family Welfare, vide letter dated 01.08.2016 (Annexure P-11) with a recommendation in his favour. The said claim of the petitioner was finally decided vide order dated 08.02.2017 (Annexure P-1) stating therein that the State Consumer Disputes Redressal Forum in its order dated 12.10.2015 has mentioned/clarified that the petitioner Dr. Jyoti Kaushal has given prescription on his private residence from which it reveals that money has been taken. The non-practicing allowance which was stopped of the petitioner was held to have been rightly stopped, thus, denying the release of the same to the petitioner from May 2011.

3. The counsel for the petitioner submits that the impugned order is not sustainable in the light of the judgment/order dated 12.10.2015 (Annexure P-6) passed by the State Consumer Disputes

Redressal Commission, Punjab, where referring to para 13 of the said judgment, he contends that the observations therein are only relatable to the grounds which have been taken by the complainant in his appeal and do not refer to any conclusions which have been drawn by the Commission as such. The conclusions with regard to the complaint are found in the subsequent paragraphs, wherein the Commission has clearly mentioned that the complainant has failed to prove any of the charges and the allegations made in the complaint. The appeal has also been dismissed along with costs of ₹5,000/-. He, thus, contends that the Secretary, Department of Health and Family Welfare, Punjab, has proceeded on wrong assumption and presumption while coming to a conclusion that the petitioner has given a prescription on his private residence and has, therefore, assumed that some money would have been charged by the petitioner, whereas there is no such finding or observation by the State Consumer Disputes Redressal Commission. Prayer has thus been made by him for setting aside the impugned order and for issuance of a direction to the respondents to release the non-practicing allowance to the petitioner since May 2011.

4. On the other hand, learned counsel for the State made an fervent effort to convince the Court that the order which has been passed by respondent No.1-The Secretary, Department of Health and Family Welfare, is based upon the judgment passed by the State Consumer Disputes Redressal Commission, wherein it has been observed that the petitioner had issued the prescription on his residential address and obviously would have taken some charges for the same.

She contends that it is apparent from the observations that the conclusion has rightly been drawn in the said order. Prayer has thus been made for dismissal of the writ petition.

5. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the pleadings and the records of the case.

6. Perusal of the impugned order dated 08.02.2017 (Annexure P-1) would show that the order of rejection of the release of the non-practicing allowance of the petitioner withheld, is based solely upon the alleged observations of the State Consumer Disputes Redressal Commission in judgment dated 12.10.2015 and to be specific, para 13 thereof. It is on the basis of the observations made in para 13 of the said judgment that respondent No.1 has concluded that the petitioner had issued a prescription on his private residence from which it is assumed that money seems to have been taken. These conclusions as have been sought to be drawn by the Secretary, on perusal of para 13, cannot be said to be correct as these are only the grounds which have been mentioned to have been taken by the complainant in his appeal, which he had preferred and recorded/mentioned in the order. No conclusions or findings have been returned by the State Consumer Disputes Redressal Commission with regard to those observations or grounds which have been taken by the complainant in the appeal. Rather the order, when seen in the light of the evidence which has been brought on record would indicate that the finding which has been given by the Commission is that the complainant has not been able to prove any of the allegations which

have been made in the complaint against the respondents therein which included the petitioner as well.

7. If that be so, the writ petition has to be allowed and the impugned order dated 08.02.2017 (Annexure P-1) passed by the Secretary, Government of Punjab, Health and Family Welfare Department-respondent No.1 being not sustainable deserves to be set aside.

8. In view of the above, this writ petition is allowed by setting aside the impugned order. Direction is issued to the respondents to release the non-practicing allowance of the petitioner with effect from 28.04.2011 within a period of two months from today.

January 31st, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No