HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

WRIT PETITION NO.52 OF 2021 (EDN-RES)

BETWEEN:

DR. CHANDAN C
AGED ABOUT 33 YEARS,
S/O CHINNARAJU.G
WORKING AS CASUALTY MEDICAL OFFICER,
SHIMOGA INSTITUTE OF MEDICAL SCIENCES,
SHIMOGA, CURRENTLY PURSUING
PG DEGREE COURSE IN ESIC
& PGIMSR COLLEGE, BANGALORE,
PERMANENT R/O FLAT NO.405,
SANGAM DOCTORS' QUARTERS,
SIMS CAMPUS, SHIVAMOGGA - 577 201.

...PETITIONER

(BY SMT. HIREMATH AKKAMAHADEVI., ADVOCATE)

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

AND:

1. THE STATE OF KARNATAKA
   DEPARTMENT OF HEALTH
   & FAMILY WELFARE,
   ROOM NO.301, 3RD FLOOR,
   VIDHANA SOUDHA,
   BANGALURU -01,
   REPRESENTED BY ITS SECRETARY.

2. THE SHIMOGA INSTITUTE OF
   MEDICAL SCIENCES, SHIMOGGA,
   AN AUTONOMOUS MEDICAL INSTITUTION,
   SAGAR ROAD, SHIVAMOGGA - 577 201,
   REPRESENTED BY ITS DIRECTOR.

3. THE DIRECTOR,
DIRECTORATE OF MEDICAL EDUCATION,
ANAND RAO CIRCLE,
BENGALURU - 9.

4. SR AUDIT OFFICER OAD SPL.CELL,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE PRINCIPAL
ACCOUNTANT GENERAL (G&SSA),
KARNATAKA, BENGALURU - 560 001.

…RESPONDENTS

(BY SRI. V.G. BHANEEPRAKASH, AAG A/W
SMT. MAMATHA SHETTY, AGA FOR R-1, R-3 & R-4;
SRI. S. B. TOTAD, ADVOCATE FOR R-2.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD.23.10.2020 IN RESPECT OF THE PETITIONER MENTIONED AT SL NO.4 PASSED BY THE 2ND RESPONDENT PRODUCED AND AS ANNEXURE-P; DIRECT R-1 TO 4 NOT TO INITIATE RECOVERY AND CONTINUE THE PAYMENT OF THE EMERGENCY TREATMENT/SPECIAL ALLOWANCE THAT THE PETITIONER IS ENTITLED AS PER LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA

CAV ORDER

This writ petition is filed seeking quashing of the impugned order dated 23.10.2020 issued by respondent No.2 holding that the Emergency Treatment Allowance ('ETA' for short) paid to the petitioner was illegal and seeking its recovery.

2. The petitioner was appointed as a Casualty Medical Officer at Shimogga Institute of Medical Sciences on 02.02.2012 and completed probation on 01.02.2014. The petitioner was initially granted an ETA of Rs.3,000/-, which was later revised to Rs.10,000/- on 18.12.2012 and subsequently to Rs.22,000/- in 2018. The petitioner was deputed to pursue MS (General Surgery) at ESI Medical College, Bengaluru under in-service quota, with the mandatory bond of ten years of service post-completion. The petitioner continued to receive the revised ETA, until an office memorandum was issued in 2019 by respondent No.2 declaring such allowances as illegal based on the Inspection Report.

3. Smt. Hiremath Akkamahadevi, learned counsel for the petitioner submits that during deputation, the petitioner was performing similar duties at ESI Medical College as earlier and was therefore entitled to continuity of the allowance. She contends that the petitioner continued to be a Government employee on deputation, and his entitlement to ETA was not affected by the jurisdiction of the institution to which he was deputed. She argues that there was no condition in the appointment or deputation order that the ETA would be discontinued during the period of higher studies and that the payment was made regularly with the approval of the Government. She contends that the allowance was paid with due sanction and in good faith, and its retrospective recovery would cause undue hardship.

4. Learned AAG Sri V.G. Bhanuprakash, along with Smt. Mamatha Shetty, AGA for respondents, argues that the ETA is meant only for active emergency service and not for those pursuing studies. He would contend that ETA

is meant for doctors working in emergency medical settings within the jurisdiction of Medical Education Department. Since the petitioner was deputed to a Medical College outside the jurisdiction of the Medical Department, the allowance is not applicable and therefore, recovery is justified. Reliance is placed on the Inspection Report that flagged the payment as irregular.

5. Learned counsel for the petitioner placing reliance on the decision of the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (white washer)***[1] *(White Washer)* would contend that the impugned recovery of the allowance paid in good faith without misrepresentation or fault on part of the petitioner is impermissible. It is submitted that the petitioner's entitlement to ETA and its continued payment during deputation cannot be declared as illegal.

[1] (2014) 8 SCC 883

6. In response, learned counsel for the respondents-State argues that ***White Washer's*** case is not applicable to the present facts, as the allowance in question was condition specific and not admissible during periods of deputation or higher study. It is submitted that the petitioner did not discharge emergency duties during such period, which forms the basis for withdrawal and recovery. It is contended that since the petitioner was deputed to ESI Medical College, which falls outside such control, he is disentitled to the allowance during that period.

7. Having heard the learned counsel for the parties, the point that arises for consideration is:

> *"Whether the petitioner, while on government approved deputation for higher studies under in-service quota, continued to be entitled to the ETA and whether, if subsequent recovery was legal and justified?"*

8. The undisputed fact is that the petitioner was appointed as Casualty Medical Officer at Shimogga Institute of Medical Sciences on 02.02.2012 and he completed his probation on 01.02.2014. He was paid ETA in accordance with the prevailing Government Orders, which were subsequently revised and increased. In 2018, the petitioner was deputed under in-service quota to pursue Post-Graduation Medical Education (MS- General Surgery) at ESI Medical College, Bangalore by an order duly approved by the Competent Authority. The deputation order clearly stated that the petitioner shall render a minimum ten years of service in the parent institution after the completion of the course, implying continuous service connection during the deputation. The petitioner continued to receive ETA as per the revised rates during this period. The impugned order seeking recovery of the said allowance is reasoned that the petitioner had been deputed to an institution outside the jurisdiction of Medical Education Department. The

impugned order stating jurisdiction is misplaced, as there is no material placed by the respondents which specifically restricts the payment of ETA to the employees who are deputed to institution outside Medical Education Department. The deputation order, approved by the Competent Authority, did not contain any provision regarding the disentitlement of the petitioner from receiving the allowances during the deputation period. Hence, the petitioner's right to ETA should not have been altered by jurisdictional aspect of the deputation institution. The Apex Court in the case of ***White Washer*** has held at paragraph No.7, 8 and 9 as under:

> *"7. In Chandi Prasad Uniyal case, a specific issue was raised and canvassed. The issue was whether the appellant therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the*

excess payment so made could be recovered. While holding so this Court observed at paras 14 and 16 as under: (SCC p. 423)

> *"14. We are concerned with the excess payment of public money which is often described as 'taxpayers' money' which belongs neither to the officers who have effected overpayment 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, 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 the 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.*
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> * * *

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order that excess payment made be recovered from the appellant's salary in twelve equal monthly instalments…."

8. In our view, the law laid down in Chandi Prasad Uniyal case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a court or tribunal in any cause or matter. The powers are plenary

to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing "complete justice" in any cause or matter.

9. The word "complete justice" was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in Prem Chand Garg v. Excise Commr. which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a nine-Judge Bench in Naresh Shridhar Mirajkar v. State of Maharashtra reiterated by a seven-Judge Bench in A.R. Antulay v. R.S. Nayak and finally settled in Supreme Court Bar Assn. v. Union of India."

9. The Apex Court in the case of ***White Washer*** laid down the clear principle that it would be inequitable to recover amounts from the employees, who were wrongly paid, when they were not at fault and had no role in the mistake. Even assuming excess payment, the case of the

petitioner stands on a strong footing than ***White Washer's*** case because this is not a case of mistaken or excess payment. It is a case where the petitioner was legally entitled to the allowance, as the deputation order was clear and categorical in mandating that, upon completion of his studies, the petitioner shall render a minimum of ten years of service in the parent institution. The order did not contain any clause curtailing the petitioner's entitlement to allowances including the ETA and thus, the impugned recovery is unjustified. The entitlement is not only equitable but legal and contractual, being supported by the deputation order, service continuity and absence of prohibition. Thus, the petitioner is on a better legal footing than in ***White Washer's*** case. The question of recovery does not arise at all and the point framed for consideration is answered accordingly, holding that the ETA allowance paid to the petitioner is not permissible to be recovered and this Court pass the following:

ORDER

i. Writ petition is ***allowed***.

ii. The impugned order dated 23.10.2020 passed by respondent No.2 seeking recovery of ETA is quashed insofar as the petitioner is concerned.

iii. The petitioner shall not be subjected to any recovery of ETA already paid.

Sd/-
JUSTICE K.S. HEMALEKHA

MBM
List No.: 19 Sl No.: 1