

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-12-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15262 of 2014

And

M.P.Nos.1 and 2 of 2014 of 2014 and 34506 of 2017

1.Dr.M.Ramanathan
2.Dr.M.Divya Vadhana
3.Dr.R.Hariram

.. Petitioners

-vs-

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The Director of Medical and Rural Health Services,
Chennai-6.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned orders issued by the first respondent in G.O.(Ms.)No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 and quash the same in so far as para 4 clause 3 (1), concerned and also quash the consequential order of the second respondent in Ref.No. 70361/E6/1/2013 dated 27.5.2014 in so far as the petitioner to continue as Chief Civil Surgeon and grant them all consequential service and monetary benefits.

For Petitioners : Mr.M.Habeeb Rahman

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader.

ORDER

The relief sought for in this writ petition is to call for the records of the first respondent in connection with the impugned order passed by the first respondent in G.O.(Ms). No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 and quash the same in so far as para 4 clause 3 (1),

concerned in respect of the writ petitioners and further direct the respondents to permit the writ petitioners to continue as Chief Civil Surgeon and grant them all consequential service and monetary benefits.

2. The learned counsel, appearing on behalf of the writ petitioners, state that the writ petitioners were initially appointed as Civil Assistant Surgeon in Government Service through Tamil Nadu Public Service Commission and accordingly continuing in service. The writ petitioners were promoted as Chief Civil Surgeon by the orders of the Government in G.O.Ms.No.354, Health and Family Welfare Department dated 23.10.2009. When the petitioners are continuing as Chief Civil Surgeon, the Government issued G.O.Ms.No.357, Health and Family Welfare Department dated 15.12.2010, granting refitment to the post of Chief Civil Surgeon/Senior Civil Surgeon/Civil Surgeon/Senior Assistant Surgeon. Certain amendments were issued to G.O.Ms.No.354, dated 23.10.2009. The amendments issued to Para xv (a) are extracted here under:

Para XV (a) a. However, the above minimum periods would be for future promotions only and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done based on the restructured posts, with the postulate that those who have completed 20 years may be fitted in the Chief Civil Surgeon level, those who have completed 15 years may be fitted in the Civil Surgeon level and those who have completed 8 years may be fitted in the Senior Assistant Surgeon level without taking into reckoning the minimum experience prescribed above for each level.	Para xv (a) The minimum periods prescribed for each level would be for future promotions only and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done without taking into consideration of number of years prescribed therein i.e., 20 years, 15 years and 8 years, respectively based on vacancy.
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Accordingly, the minimum period of 20 years prescribed in G.O.Ms.No.354, Health and Family Welfare Department dated 23.10.2009, for getting promotion to the post of Chief Civil Surgeon was relaxed.

3. The learned counsel for the writ petitioners contended that the stage of relaxation was granted on account of the fact

that 335 posts of Chief Civil Surgeon posts were vacant and it was necessary for the State to fill up all those posts and by granting relaxation of the qualifying services of 20 years, the petitioners who have not completed 20 years of service were granted refitment by virtue of G.O.Ms.No.357, Health and Family Welfare Department dated 15.12.2010.

4. Pursuant to the above G.O.Ms.No.357 dated 15.12.2010, the Director of Medical and Rural Health Services passed an order in Ref.No.78000/E6/1/09, dated 21.01.2011, granting refitment to all the petitioners. The order of the Director of Medical and Rural Health Services states that as per the instructions contained in Government letters dated 28.01.2010, 03.02.2010 and 29.03.2010, the Director of Medical and Rural Health Services has approved the list of 239 Medical Officers in the cadre of Senior Assistant Surgeon ad mentioned in the Annexure for refitment to the post of Chief Civil Surgeon (Common/Specialist) for the year 2009, as ordered therein, with effect from the date of taking charge.

5. Pursuant to the order of the Director of Medical and Rural Health Services dated 21.01.2011 all the petitioners have taken charge as Chief Civil Surgeon and continuing in the said post. While so, the Government issued an impugned order in G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013, stating that the Doctors, who have not completed 20 years of service by 31st December 2012, will be reverted to appropriate pay in suitable pay band with effect from 1st January 2013. At the outset, the relaxation granted in favour of the writ petitioners were sought to be withdrawn without any notice and opportunity to the writ petitioners.

6. Further, the learned counsel appearing for the writ petitioners contended that the benefits conferred on the Government Employees cannot be withdrawn, since they have continued in the post for fairly a long period and the pay band fixed also cannot be reduced or withdrawn. In support of the contentions, the learned counsel for the writ petitioners referred the Judgment of Hon'ble Supreme Court of India in the case of P.U.Joshi and other Vs. Accountant General, Ahmedabad and Others reported in (2003) 2 Supreme Court Cases 632 and the relevant paragraph No.10 is extracted here under:

"10.We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/ abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive

discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/Subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State of amend, alter and bring into force new rules relating to even an existing service."

7. The learned counsel for the writ petitioners referred another Judgment of Hon'ble Supreme Court in the case of High Court of Delhi and another Vs. A.K.Mahajan and Others [(2009) 12 SCC 62] and the relevant paragraph No.20 is extracted here under:

"20.We must observe that the said para 24 of Rangadhamaiah Case is being interpreted in an erroneous way. Its clear language suggests that where the amendment, having retrospective operation, which has the effect of taking away a benefit already available to the employee, then such a provision is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution of India."

8. The learned counsel for the writ petitioners referred yet another Judgment of Hon'ble Supreme Court in the case of State of Madhya Pradesh and others Vs. Yogendra Shrivastava [(2010) 12

SCC 538] and the relevant paragraph No.15 is extracted here under:

"15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C.Singhal v. Armed Forces Medical Services⁵; K.C.Arora v.State of Haryana⁶ and T.R.Kapur v.State of Haryana⁷.) Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to non-practising allowance @ 25% of their pay up to 20-5-2003."

9. Considering the above Judgments, the learned counsel for the writ petitioners emphatically stated that once a Government employee was conferred with certain service benefits, the same cannot be withdrawn. This apart, in the case on hand, the benefits conferred was by relaxing the rule relating to the experience of 20 years of total service, when the rule relating to the length of service was relaxed and the petitioners were conferred with the benefit of refitment to the post of Chief Civil Surgeon, the same neither be withdrawn, nor the scale of pay fixed for the particular post. This being the principle, the attempt of the State through the impugned Government Order for withdrawal of such benefit is bad in law.

10. The learned Additional Government Pleader, appearing on behalf of the respondents, contended that no doubt by virtue of G.O.Ms.Nos.354 and 357, the benefit of refitment was granted by relaxing the total completed 20 years of service. However, the persons who were refitted in the cadre of Chief Civil Surgeon are not performing their duties and responsibilities attached to the post. In this regard, the learned Additional Government Pleader referred the counter affidavit filed on behalf of the respondents and in paragraph No.12 of the counter affidavit in W.P.No.33641 of 2013 it is stated that G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 and G.O.Ms.No.357, Health and Family Welfare Department, dated 15.12.2010, have been issued in favour of the Medical Officers working in Tamil Nadu Medical Services. For the above said Government Orders, the Medical Officers who were not completed 20 years of service have also got more monetary benefits for fixing their pay in pay band IV. But, those Medical Officers have refused to perform

the duties assigned to them and consequent to that a better service could not be provided to the poor public. To avoid such kind of situation, the Government have issued clarificatory orders in G.O.Ms.No.245, Health and Family Welfare Department dated 30.10.2013. However, while issuing the above said Government Order, the Government have taken lenient view in respect of the Medical Officers and decided not to revert the Medical Officers who were completed 20 years of service as on 31.12.2012.

11. Even in page No.4 of the counter affidavit filed in W.P.No.30652 of 2013, the respondents have reiterated that the review meeting was conducted in respect of the benefit granted to those Doctors, by virtue of G.O.Ms.Nos.354 and 357. During the review meeting, it is found that many Medical Officers including the petitioners who are working in the cadre of Chief Civil Surgeon but not completed 20 years of service have not performed the duties assigned to them in Government hospitals such as 24 Hours duty/call duty/postmortem duty/Casualty duty though duty exemption have been ordered to the Chief Civil Surgeon who have completed more than 20 years of service only as on 23.10.2009. Due to the non performance of the regular duties by the Medical Officers who have refitted/promoted as Chief Civil Surgeon since they have not completed 20 years of service, the poor public have suffered a lot and if this position is continued then the maintenance of the public health become questionable and the smooth functioning of the Government Hospitals will be affected.

12. The learned Additional Government Pleader invited the attention of this Court in paragraph No.7 of the counter affidavit filed in W.P.No.30652 of 2013 which states as under:

"7.It is submitted that the Committee has not recommended to give refitment/promotion to the Medical Officers who have not been completed 20 years of service in G.O.(Ms).No.354, Health and Family Welfare Department, dated 23.10.2009, approximately 1282 Chief Civil Surgeon posts have been created and the Medical Officers, who have completed 20 years of service have been refitted/promoted as Chief Civil Surgeon with Pay Band-IV with Grade Pay of Rs.8,700/- in a phased manner vide proceedings of the second respondent herein dated 15.02.2010 and 30.04.2010. After effecting the refitment/promotion to the Medical Officers working in the cadre of Senior Civil Surgeon/Civil Surgeon Specialists/Civil Surgeon, approximately 335 Chief Civil Surgeons posts remained vacant. Hence, the Government have amended the prescribed years to the said post as a one time measure in G.O.Ms.No.357, Health and Family Welfare Department, dated 15.12.2010

that the minimum periods prescribed for each level would be for future promotions only and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done without taking into consideration of number of years prescribed therein i.e. 20 years, 15 years and 8 years, respectively based on vacancy."

13. Based on the counter affidavit the learned Additional Government Pleader appearing on behalf of the respondents is of the opinion that no doubt certain benefits were conferred to the petitioners by virtue of G.O.Ms.Nos.354 & 357. However, the Government is forced to revert back the benefits on account of the poor performance of the petitioners in the cadre of Chief Civil Surgeon.

14. Considering the arguments as advanced both by the learned counsel, appearing on behalf of the petitioners as well as the learned Additional Government Pleader, appearing on behalf of the respondents, this Court is of the opinion that admittedly, the benefits were conferred to these writ petitioners by virtue of G.O.Ms.Nos.354 and 357. Based on the above said Government Orders the petitioners were granted the benefit of refitment in the cadre of Chief Civil Surgeon by virtue of an order passed by the Director of Medical and Rural Health Services in proceedings dated 21.01.2011, as such, the petitioners are continuing in the said post of Chief Civil Surgeon for the past about 6½ years. Thus, the withdrawal of the benefits granted in G.O.Ms.Nos.354 and 357 cannot be effected through G.O.Ms.No.245, Health and Family Welfare (A2) Department dated 30.10.2013. The writ petitioners are continuing in the post of Chief Civil Surgeon by virtue of interim orders granted by this Court in these writ petitions, even otherwise and it is brought to the notice of this Court that some of the writ petitioners have already retired from service and further it is informed that some of the writ petitioners have completed 20 years of service as on the date of impugned order.

15. May that it be, this Court has to consider the very legal principles that once the service benefits have been granted to the advantage of the Government employees, the Government cannot withdraw the benefit to the disadvantage of the employees. The benefits can be improved and it cannot be reduced. The benefits granted by virtue of certain Government Orders issued by the State cannot sought to be withdrawn without any valid reasons.

16. In the case on hand the Government has withdrawn the benefits only on the ground that the writ petitioners have not

performed their duties and responsibilities in the post of Chief Civil Surgeon. Failure on the part of the writ petitioners in performing the duties and responsibilities may warrant disciplinary action under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, not only the Doctors but also the public servant who are all committing an act of negligence and dereliction of duty is liable for prosecution under the Discipline and Appeal Rules. Contrarily, the State cannot withdraw the service benefits suo motu by virtue of an order unilaterally.

17. This Court is of the firm opinion that erring officials are to be punished and so also the officials committing misconduct are also to be punished. However, this will not be a ground for the authorities to withdraw the benefits already granted by virtue of the Government Orders.

18. On a perusal of the entire counter affidavit, the respondents have withdrawn the benefits granted in the cadre of Chief Civil Surgeon on the ground that they have conducted a review meeting and found that the writ petitioners were not performing their duties and responsibilities attached to the post of Chief Civil Surgeon. If such a finding is arrived by the Review Committee and a suitable direction issued to initiate appropriate disciplinary action against all the Doctors who were not performed their duties and responsibilities attached to the post of Chief Civil Surgeon. Contrarily, they cannot withdraw the benefits already conferred by virtue of the Government Orders in G.O.Ms.Nos.354 and 357.

19. At this juncture, the learned counsel appearing on behalf of the writ petitioners states that the writ petitioners have filed an additional typed set of papers stating that the producing the duty certificates of all the writ petitioners issued at various point of time. However, this Court cannot scrutinize all the certificates issued in relation to the duties and responsibilities of the officers concerned and it is for the Competent Authorities to assess the job performed by the officials and take appropriate action, if necessary and in accordance with the rules.

20. In respect of the arguments advanced by the learned Additional Government Pleader appearing for the respondents, this Court is of the opinion that the same deserves no consideration, in view of the fact that the learned Additional Government Pleader relying on the counter affidavit has stated that the decision was taken in the review meeting conducted by the officials and during the review meeting it was found that the petitioners were not performing their duties and responsibilities attached to the post of Chief Civil Surgeon.

As stated above, it is for the Competent Officials to assess the performance of the Doctors working in the cadre of Chief Civil Surgeon and initiate appropriate action in accordance with the rules.

21. Such being the finding, this Court is of the opinion that the impugned class in G.O.Ms.No.245, Health and Family Welfare (A2) Department dated 30.10.2013, is in violation of the legal principles settled in this regard by the Courts. The legal principles relied is that once the benefits are granted to the Government employees by way of the policy cannot be withdrawn to their disadvantage.

22. This apart, the Rule 2 of the Fundamental Rules reads as follows:

"2.The Fundamental Rules apply, subject to the provisions of Rule 3, to all Government servants paid from the Consolidated Fund of the State and to any other class of Government Servants to which Government may by general or special order declare them to be applicable. The Government may, in relation to service, under their administrative control other than All India Services, make rules modifying or replacing any of the Fundamental Rules."

23. The very spirit of the Fundamental Rule is that once the benefits were granted to the employees the same cannot be withdrawn to their disadvantage. Such being the language and the spirit of the Fundamental Rules, the benefit granted to these writ petitioners by virtue of G.O.Ms.Nos.354 and 357 cannot be withdrawn to their disadvantage and by reverting the petitioners.

24. Thus, this Court is of the firm opinion that the impugned class prescribed in G.O.Ms.No.245, Health and Family Welfare (A2) Department dated 30.10.2013, is contrary to the settled principles of service jurisprudence and accordingly liable to be set aside.

25. In view of the discussions made above, the impugned clause in para 4 clause 3 (1) in G.O.Ms.No.245, Health and Family Welfare (A2) Department dated 30.10.2013, issued by the first respondent is quashed and the petitioners shall be allowed to perform their duties and responsibilities attached to the post of Chief Civil Surgeon, in accordance with the refitment order issued earlier. It is made clear that if any dereliction or negligence of duty is found then it is left open to the respondents to periodically assess the work performed by the petitioners and initiate appropriate disciplinary action if necessary in accordance with the Tamil Nadu Conduct Rules.

26. Accordingly, the writ petition stands allowed. However,

there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svn

To

1.The Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

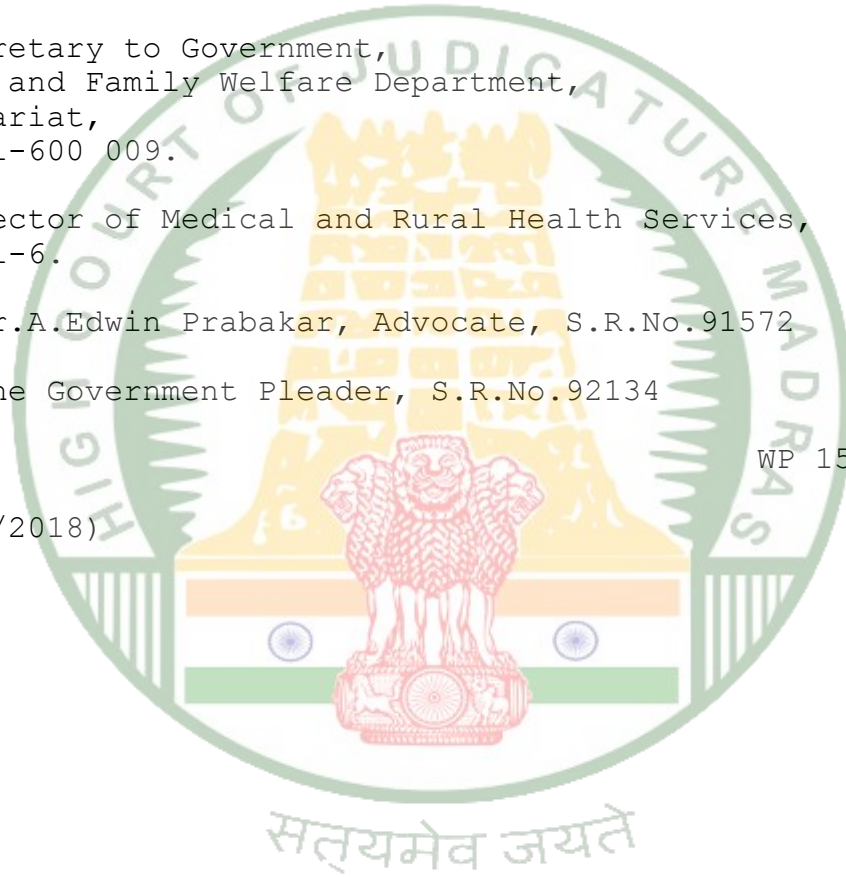
2.The Director of Medical and Rural Health Services,
Chennai-6.

+3cc to Mr.A.Edwin Prabakar, Advocate, S.R.No.91572

+1cc to the Government Pleader, S.R.No.92134

WP 15262 of 2014

RK(CO)
RRK(05/02/2018)



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