

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1116 of 2019
and
C.M.P. No. 8035 of 2019

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director,
Local Fund Audit Department,
Kuralagam,
Chennai - 600 108.
3. The Collector,
Pudukkottai District,
Pudukkottai.
4. The Commissioner,
Avudayarkoil Panchayat Union,
Pudukkottai District. Appellants/Respondents

-vs-

S. Ramamurthy Respondent/Petitioner

PRAYER:-

Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 03.10.2016 in W.P. No. 16684 of 2015.

W.P.No.16684 of 2015:-

Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents to forthwith calculate and pay the revised pension and arrears of pension based on G.O.Ms.No.408 (Finance) Pension Department dt 25.8.2009 in the time bound manner by taking into consideration

the 50% of the services rendered by the petitioner prior to 1.10.1984

For Appellants : Mrs. A. Sri Jayanthi,
Special Government Pleader

For Respondent : Mr. S. Ramesh

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 03.10.2016 in W.P. No. 16684 of 2015 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner was initially appointed as Rural Medical Officer on 23.09.1981 in Panchayat Union Dispensary at Thirupunnavasal, Pudukottai District borne out under the Panchayat Union Establishment and was getting consolidated pay up to 30.09.1984. The Government of Tamil Nadu in G.O. (Rt.) No. 16, Rural Development (E5) Department dated 29.01.1998 directed the payment of salary to Rural Medical Officers in time scale of pay with effect from 01.10.1984 in terms of G.O. 737, Finance (Pay Cell) Department dated 11.07.1985. The Petitioner retired from service on attaining the age of superannuation on 10.06.1999. The Petitioner filed W.P. No. 16686 of 2015 to take note of 50% of the period of service of the Petitioner as Rural Medical Officer till 01.10.1984 for the purpose of granting pension. The Learned Judge, who heard the Writ Petition, by order dated 03.10.2016, following the order dated 08.10.2012 in W.A. No. 1618 of 2012 passed by the Division Bench of this Court confirming the order dated 12.11.2011 in W.P. Nos. 53 to 56 of 2011, allowed that Writ Petition. Aggrieved thereby, the Respondents have preferred this appeal.

3. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the Respondents, Mr. S. Ramesh, Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

4. The claim made by the Petitioner for the relief sought in the Writ Petition arises out of Rule 11(4) of the Tamil Nadu Pension Rules, 1978, which has been introduced by way of amendment by G.O. Ms. No. 41, Finance (Pension) Department dated 09.02.2010, and reads as follows:-

"Half of the service rendered under the State Government in non-provincialised service, consolidated pay, honorarium or daily wages basis on or after 1st January 1961 in respect of Government employees absorbed in regular service before 1st April 2003 shall be counted for retirement benefits along with regular service, subject to the following conditions, namely:-

- (i) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be in a job involving whole time employment;
- (ii) Service rendered shall be on consolidated pay, honorarium or daily wages basis paid on monthly basis and subsequently absorbed in regular service under the State Government;
- (iii) Service rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis shall be followed by absorption in regular service before 1st April 2003 without a break.

Provided that this sub-rule is applicable to all employees who rendered service under the State Government in non-provincialised service, consolidated pay, honorarium or daily wage basis on or after 1st January 1961 and absorbed in regular service before 1st April 2003.

Provided further that wherever there was break in service before their absorption in regular service before 1st April 2003, the same shall be specifically condoned by the orders of the Head of Departments, in which the employees were regularly absorbed and such period of break, shall not count for the purpose of pensionary benefits."

5. The only reason attributed by the Respondents for denying the benefit under Rule 11(4) of the Tamil Nadu Pension Rules, 1978, to the Petitioner is that his employment as Rural Medical Officer prior to 01.10.1984 was on part time basis, which could not be reckoned in terms of clause (i) in that sub-rule which mandates whole time employment for the purpose of computing the period of qualifying service for eligibility for pension.

6. It requires to be noticed here that the Government of Tamil Nadu in G.O. (Rt.) No. 16, Rural Development (E5) Department dated 29.01.1998 directed the payment of salary to the Rural Medical Officer in the time scale of pay with effect from 01.10.1984 pursuant to the orders passed by this Court in the order dated 01.02.1996 in W.A. No. 922 of 1995 confirming the order dated 08.03.1995 in W.P. No. 863 of 1989 and the order dated 08.08.1997 in W.A. No. 2007 of 1997 etc., batch. The

contention of the Respondents is that the Rural Dispensaries, where the Rural Medical Officers were worked were functioning on part time basis up to 01.10.1984 and as such, the Petitioner cannot claim to have worked on full time basis till that date.

7. It also requires to be stated here that the Government of Tamil Nadu in G.O. (Ms.) No. 250, Rural Development Department dated 14.09.2000 had in clause (e), (g) and (h) of para 3, directed as follows:-

"(e) Pension benefits are eligible only for the regular employees. The panchayat union rural medical officer post is a part time post and therefore the part time rural medical officers are not entitled for the pension benefits. The other terminal benefits applicable for regular employees like selection grade, special grade, compassionate ground appointments, group insurance, provident fund, encashment of earn leave and surrender are not applicable to the part time medical officers.

(g) Considering the nature of work there is no necessity for post graduation for the post of panchayat union regular medical officers and part time rural medical officers. Those rural medical officers who were already under going post graduations are entitled only for stipend during that period. Since they are entitled for stipend they are not entitled for scale of pay during their further studies when they are not doing service in the panchayat unions.

(h) The medical officers in panchayat union rural dispensaries are appointed from the villages and further the responsibilities are less than that of the medical officers working in primary health centres and the government doctors. And therefore they are not entitled for rural allowance and personal pay."

8. The Division Bench of this Court in A. Muthuselvam -vs- State of Tamil Nadu (Order dated 19.04.2006 in W.P. No. 30003 of 2004 etc., batch) held that clauses (e), (g) and (h) of para 3 of G.O. (Ms.) No. 250, Rural Development Department dated 14.09.2000 issued by the Government of Tamil Nadu were invalid. The relevant portions from that order are extracted below:-

"22. G.O. Ms. No. 250, dated 14.09.2000 proceeds on the basis that there are two types of dispensaries, namely regular dispensaries and part-time rural dispensaries in the control of the Panchayat Unions. The said G.O. Ms. No. 250 also proceeds on the basis that "the part time rural medical officers working in Panchayat Union were placed under the time scale of pay as per the orders of the Madras High Court from

01.10.1984" and it also starts on a query as to whether the rural medical dispensaries shall continue as part time dispensaries and whether vacancies should be filled up and whether the Rural Medical Officers are entitled for the other benefits that of other regular employees. Clause (a) of paragraph 3 of G.O. Ms. No. 250 proceeds on the basis that the functions of the rural dispensaries were not assessed so far and therefore, there was a need to assess the necessity of continuing the Panchayat Union dispensaries and their functions and till such assessment is made, pending Government decision, the Panchayat Unions were restrained from opening rural dispensaries. Clause (b) of paragraph 3 of G.O. Ms. No. 250 states that since primary health centres are available in all Panchayats in Tamil Nadu, the rural dispensaries shall function as part-time dispensaries. Clause (d) of paragraph 3 of G.O. Ms. No. 250 accepts that the post of Rural Medical Officers are occupied by graduates and certificate holders like B1, B2, C registered medical practitioners and of different qualifications. It however adds that they do the same work and they are all part-time Rural Medical Officers and the salary should be paid in terms of G.O. Ms. No. 16, Rural Development Department, dated 29.01.1998 and as per the orders of the High Court. Clause (e) of paragraph 3 of G.O. Ms. No. 250 denies pension benefits to the Rural Medical Officers on the ground that the post is a part-time post and therefore, the part-time Rural Medical Officers are not entitled to the pension benefits. Consequently, the other terminal benefits applicable for regular employees like selection grade, special grade, compassionate ground appointments, group insurance, provident fund, encashment of earned leave and surrender, are not made applicable to the part-time medical officers. Clause (g) of paragraph 3 of G.O. Ms. No. 250 deals with payment of stipend during the period in which they are undergoing post-graduation course. Clause (h) of paragraph 3 of G.O. Ms. No. 250 deals with denial of rural allowance and personal pay on the ground that the responsibilities of rural medical officers are less than that of the medical officers working in primary health centres and the Government Doctors.

23. In spite of clear and categorical finding by this Court that the rural medical officers are holding the post on permanent basis and working on the prescribed working hours on regular basis and not on part-time basis, the impugned G.O. proceeds on the basis that

the post is part-time post. This is in spite of the fact that the order of the learned single Judge as well as the Division Bench of this Court have clearly held that the rural medical officers should be given the benefit of time scale of pay as they were working on regular basis. The Government has from time to time prescribed the working hours and granted the service benefits like special pay, special compensatory allowance, medical allowance, payment on surrender of earned leave, selection grade, medical leave, earned leave, etc. to the petitioner in W.P. No. 20316 of 2002, namely Dr. J. Krishnamoorthy, however the only claim which was denied to this petitioner is the pension and other terminal benefits based on the impugned G.O. Ms. No. 250.

25. On a clear reading of the various orders of this Court and the proceedings of the Government cited and on going through the impugned G.O. Ms. No.250, we have no hesitation to come to the conclusion that the impugned G.O. Ms. No. 250 at the best deals with the status of the rural medical dispensaries for the future. It also speaks about the vacancies to be filled up. However, a portion of the G.O. Ms. No. 250 deals with the service condition of rural medical officers who are already employed full-time and on a permanent basis. In this regard, Clause (e) of paragraph 3 of the G.O. Ms. No. 250 becomes relevant as it seeks to deny the pensionary benefit to the rural medical officers on the ground that the post of rural medical officer is a part-time post and therefore, they are not entitled to pension benefits. Though Clause (e) of paragraph 3 of the G.O. can be said to be prospective, it is in effect retrospective in nature. However, on a reading of Clause (f) of paragraph 3 of the G.O., it is seen that a reference is made to the time scale of pay paid to rural medical officers pursuant to the orders of the High Court. In respect of Clause (f), the employees are referred to as part-time medical officers. In the same manner, the opening paragraph of G.O. Ms. No. 250, dated 14.09.2000 also refers to the part-time rural medical officers and that their time scale of pay has been fixed pursuant to the orders of this Court. It is on the basis of this observation in the G.O. Ms. No. 250, the pensionary benefits were denied on the ground that the pensionary benefits are eligible only for permanent employees and not to part time employees.

26. The impugned G.O. Ms. No. 250 insofar as it

refers to post of rural medical officer as part-time post and the rural medical officers as part-time rural medical officers, is clearly opposed to and contrary to the judgments of this Court in W.P. No. 863 of 1989, dated 08.03.1995 and the order of the First Bench of this Court in W.A. No. 922 of 1995 etc., dated 01.02.1996. It is also contrary to various Government Orders already issued fixing the time scale of pay insofar as the rural medical officers are concerned. Several correspondences between the Government and the authorities which we have referred to earlier, show that the rural medical officers are regular employees working on the prescribed working hours and therefore, it will be incorrect to state at the present, that they are part-time rural medical officers employed in the part-time post. The impugned G.O. Ms. No. 250 which refers to the medical officers as part-time medical officers employed in part-time post, is incorrect and has to be necessarily interfered with. The rural medical officers cater to the health needs of the people living in remote villages. In the earlier part of this order, we have referred to G.O. No. 2446, Education and Public Health Department (Public Health), dated 24.09.1937, where the Government has even allowed the Presidents of the Local Boards to fix the working hours of rural dispensaries. It is therefore apparent that the rural dispensaries have been functioning for more than six decades. However, surprisingly, it is for the first time in the year 2000 that the Government has woken up from its slumber to state that the functions of the Panchayat Unions dispensaries should be assessed. It only speaks about the lethargy on the part of the authorities concerned in having failed to address themselves to the needs of the rural people and the working of the rural dispensaries.

28.It may be that the Government as a policy decision, has decided not to fill up the vacancies to the post of rural medical officers or maintain the dispensaries; but it cannot deny the benefits to the rural medical officers who are regularly working as rural medical officers on permanent basis and who have been granted the benefit of time scale of pay pursuant to the orders of the Court. The impugned G.O. Ms. No. 250 insofar as it impinges upon the rights of the Petitioners to the benefits of pension and other terminal benefits, will have to be struck down as arbitrary and irrational.

39. The Petitioners are rightfully entitled to seek the benefits as claimed. Therefore, we are of the clear view that Clause (e) of paragraph 3 of the impugned G.O. Ms. No. 250, dated 14.09.2000, whereby the benefits of pension and other terminal benefits are denied to the Petitioners, is invalid. Similarly, Clauses (g) and (h) of paragraph 3 of the impugned G.O. Ms. No. 250, which deny certain other benefits to the rural medical officers who have been employed prior to the passing of the impugned G.O. Ms. No. 250, are opposed to the provisions of the Constitution. In any event, it cannot be made applicable to the rural medical officers who are in employment prior to the passing of the impugned G.O. Ms. No. 250, dated 14.09.2000.

40. G.O. Ms. No. 250, dated 14.09.2000 insofar as it seeks to deny the benefits to the Rural Medical Officers is invalid. It over-rides the orders of the First Bench of this Court, wherein, it is clearly held that the Rural Medical Officers have to be given time-scale of pay and other service benefits applicable from to time. In this background, the impugned G.O. Cannot be sustained. Therefore, Clauses (e), (g) and (h) of paragraph 3 of the impugned G.O. Ms. No. 250, dated 14.09.2000 insofar as the Petitioners are concerned, are liable to be interfered with. We therefore hold that Clauses (e), (g) and (h) of paragraph 3 of the impugned G.O. Ms. No. 250, dated 14.09.2000, is invalid and will be inapplicable prior to the passing of the impugned G.O. Ms. No. 250, dated 14.09.2000 are concerned. The rural medical practitioners are to be treated as employees on regular service working in the rural dispensaries with effect from 01.10.1984 in terms of the order of the First Bench of this Court in W.A. No. 922 of 1995 etc., dated 01.02.1996, with all monetary and service benefits."

9. When persons similarly placed to the Petitioner in WP. Nos. 53 to 56 of 2011 had sought for extending the benefit of counting 50% of their service as Rural Medical Officer prior to 01.10.1984, for the purpose of reckoning the period of qualifying service for pension, the Learned Judge of this Court, after referring to the aforesaid earlier judgments, by order dated 12.11.2011 held as follows:-

"When the Honourable Division Bench of this Court has given a clear and specific finding on facts that the Rural Medical Practitioners are to be treated as

employees on regular service working in the rural dispensaries, the earlier services rendered by them cannot be refused to be taken into account for the purpose of computing their pension, in accordance with the Government Order passed in G.O. Ms. No. 408, Finance (Pension) Department, dated 25.08.2009. When the Petitioners were directed to be treated on par with the other regular employees, they are entitled for all the benefits and they cannot be treated differently. The ratio laid down by the Honourable Division Bench of this Court on the earlier two occasions has become final as against the Respondents and in fact, the same was accepted and implemented by the Court. Therefore, when the nature of work is the same and the Petitioners were treated as regular employees with a specific finding that they have been doing the work of regular employees right from the very date of appointment, they cannot be differentiated on the sole ground that prior to the regularisation they were working in a part time capacity and therefore they are not entitled for the benefits as against the erstwhile daily rated employees who were subsequently regularised. Such a classification being an artificial classification, is impermissible under Article 14 of the Constitution of India.

6. When a party gets a right under a judgment, the said accrued right cannot be denied based upon an artificial classification. There is absolutely no basis for treating the Petitioners differently than that of the other employees inspite of the ratio laid down by the Honourable Division Bench of this Court on the earlier occasions. When the Petitioners have been given all other benefits treating them on par with the regular employees, for the purpose of computing the pension alone they cannot be treated differently, even after the judgment of the Honourable Division Bench of this Court, directing the Government to give them the benefits on par with the other employees. It is to be seen that the Government Orders gives the benefit to the erstwhile consolidated and daily rated employees who are not in a better position than the Petitioners.

7. In other words, this Court on the earlier occasions found that such a classification cannot be sustained in the eye of law. The denial of computation of pension to the Petitioners in accordance with the Government Order passed in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 is nothing but an attempt to interfere with

the orders passed by this Court. What has to be seen is the ratio laid down by the Court of law and on a mere technical ground the Petitioners cannot be non-suited. The very object of the Government Order passed in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 is to give benefits to the employees, who were working earlier on consolidated as well as daily rated wages. Therefore, the Petitioners without any basis cannot be denied the said benefits as such a benefit will have to be extended to the Petitioners as well."

In the order dated 08.10.2012 in W.A. No. 1618 of 2012 preferred against the aforesaid order, the Division Bench of this Court confirming the same, held as follows:-

"7. From a mere reading of the order in W.P. No. 30003 of 2004, it is clear that this Court has already given a specific finding on facts that the Rural Medical Practitioners are to be treated as employees on regular service working in the rural dispensaries. As such, the earlier services rendered by the Respondent cannot be refused to be taken into account with the G.O. Ms. No. 408 dated 25.08.2009 and he cannot be treated differently.

8. It is also pertinent to note that the Government Order gives the benefit to the erstwhile consolidated and daily rated employees who are not in a better position than the Respondent. As rightly held by the learned Judge that when a party gets a right under a judgment, the said accrued right cannot be denied based upon an artificial classification. Further, this Court on the earlier occasions found that such a classification cannot be sustained in the eye of law. More so, to explain, at the cost of

repetition, the very object of G.O. Ms. No. 408 dated 25.08.2009 is to give benefits to the employees, who were working earlier on consolidated pay as well as daily rated wages. Therefore, the 50% of the service rendered by the Respondent from 01.07.1972 till 01.10.1984 will have to be taken into account for calculation of pension. We are in total agreement with the findings rendered by the learned single Judge. Therefore, the interference sought to be made into the well considered and merited order passed by the learned single Judge is neither warranted nor called for."

10. In the light of the clear findings in the earlier decisions of this Court referred supra and in the absence of any materials

placed before this Court to the contrary, it is not possible to accept the self-serving claim of the Respondents that the services of the Rural Medical Officers like the Petitioner prior to 01.10.1984 were engaged on part time basis. We must also point out here that the Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Arvind Kumar Srivastava [(2015) 1 SCC 347] has reiterated that when a particular set of employees have been given relief by the Court, all other identically situated employees should be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. In view of the aforesaid dictum, the Petitioner is entitled to the same benefit, which has been granted in respect of similarly placed persons in the decisions referred supra.

11. The order passed by the Writ Court is in consonance with the earlier orders passed by the Division Benches of this Court and we do not find any reason to differ from the same.

12. Accordingly, we dismiss the Writ Appeal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vjt

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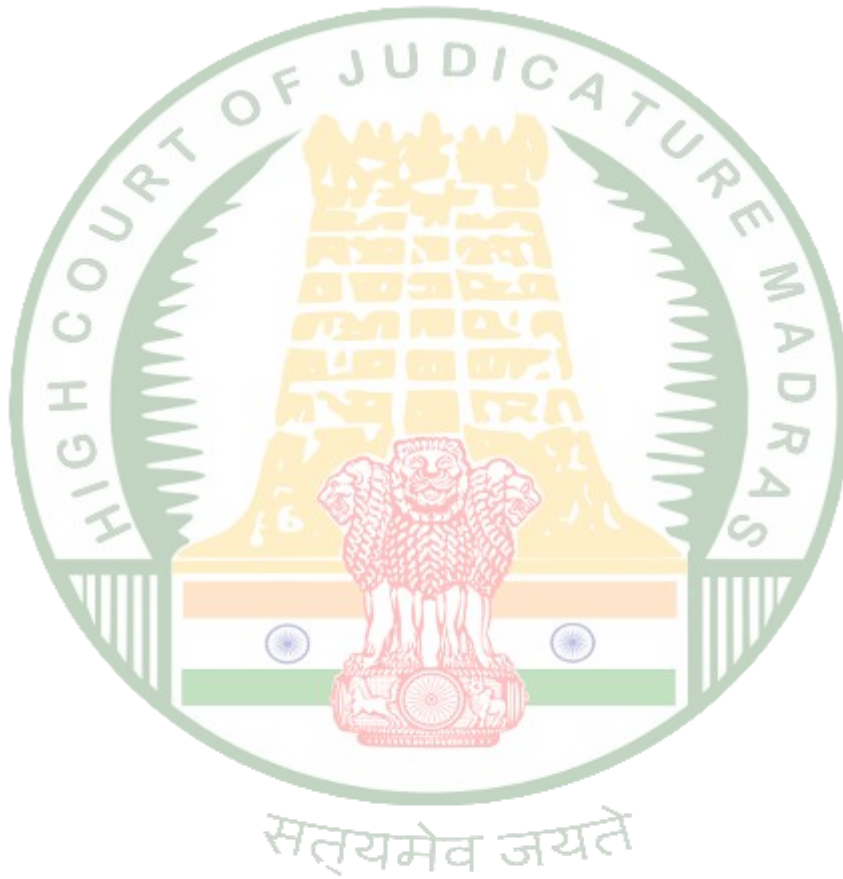
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+1cc to the Government Pleader, S.R.No.34011

W.A.No.1116 of 2019

AD (CO)
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