

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on:</i> 02.08.2019	<i>Delivered on:</i> 30.09.2019
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No. 32338 & 32445 of 2017 &
W.M.P.Nos.35605 & 35736 of 2017

D.Sumathi .. Petitioner in
WP 32338 of 2017

P.Ananthanayaki .. Petitioner in
WP 32445 of 2017

versus

1. State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Health and Family Welfare (E2) Department,
Fort St.George, Chennai-600 009.

2. Director of Medical Education,
rep. by its Director,
Kilpauk, Chennai-600 010.

... Respondents 1 & 2
in both Writ Petitions

3. Government Vellore Medical College & Hospital,
rep. by its Dean,
Adukkamparai, Vellore.

4. Institute of Mental Health,
rep. by its Director,

Kilpauk, Chennai-600 010.

.. Respondents 3 & 4
in WP 32338 of 2017

5. Government of Thoothukudi Medical
College & Hospital,
rep. by its Dean, Thoothkudi.

6. Govt.Raja Mirasudhar Medical College & Hospital,
rep. by its Dean,
Thanjavur.

.. Respondents 3 & 4
in WP 32445 of 2017

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondents to re-designate the sanctioned post of Psychiatric Social Worker mentioned in G.O.Ms.No.144 Health and Family Welfare (E2) Department dated 30.4.2007 as that of Social Welfare Officer in terms of G.O.Ms.No.793 Health and Family Welfare Department dated 21.10.1994 and pay the corresponding scale of pay as Rs.5900-200-9900 in terms of G.O.Ms.No.162 Finance Department dated 13.4.1998 and to carryout similar correction in the appointment order issued to the petitioner on 26.06.2008 and subsequent orders and pay the arrears of increments and all other benefits on the basis.

For Petitioners : Mr.N.G.R.Prasad for
Mr.Row and Reddy

For Respondents : Mr.V.Kathirvelu, Spl.G.P.
for R1&R2

COMMON ORDER

The issues and grounds raised in both the Writ Petitions are common and therefore, both the Writ Petitions are taken up together and being disposed of vide this common order as under.

2. The facts and the circumstances necessitating the filing of the Writ Petition in W.P.No.32338 of 2017 are stated as under, which are in substance, similar to the other writ petition also.

3. The Government has issued G.O.Ms.No.793 Health and Family Welfare Department dated 21.01.1994, sanctioning the posts of Medical Social Worker and Psychiatric Social Worker with Post Graduate qualification in the pay scale of Rs.1820-3200. The posts were re-designated on

08.11.1994 as Social Welfare Officers. By G.O.Ms.No.162 Finance Department dated 13.4.1998, the pay scale of Rs.1820-3200 was revised to Rs.5900-9900 in implementation of V Pay Commission's recommendations. There was also a post nomenclatured as Social Worker in the lower rung which carries the pay scale of Rs.1200-2040 (pre-revised) and revised after V Pay Commission as Rs.4000-6000. The post Social Worker stipulates qualification as 'pass in Matriculation'. By G.O.Ms.No.144 Health and Family Welfare (E2) Department dated 30.04.2007, various posts were sanctioned for Medical Colleges in the State including 3rd respondent College. One such post was Medical Social Worker. However, the pay scale was prescribed for the said post was Rs.4000-6000 instead of Rs.5900-9900. According to the petitioners, they came to be appointed as Medical/Psychiatric Social Workers in pursuance of the above said G.O. and both the writ petitioners have P.G. qualification as prescribed in G.O.Ms.No.793 dated 21.10.1994 but they

were granted lower pay scale, i.e. Rs.4000-6000 which pay scale was applicable to the post of Social Worker with qualification of 'pass in Matriculation'.

4. Although the petitioners have accepted the appointment initially, later on they felt that mistakenly, the appointing Authority had fixed lower pay scale to the post of Medical Social Worker/Psychiatric Social Worker and equated the same with the post of Social Worker by prescribing lower pay scale. The post of Medical Social Worker later was re-designated as Social Welfare Officer vide G.O.Ms.No.162 dated 13.4.1998. In view of the glaring anomaly in the prescription of pay scale not commensurate with the P.G.qualification of the petitioners in Social Work and related subjects, the petitioners submitted a representation to the second respondent for review of their pay scale and grant them appropriate pay scale as Rs.5900-9900. The representation was initially submitted on 3.9.2009 and was

forwarded to the second respondent for further action. Despite the legitimate request of the petitioners, without taking any action on the representation, the petitioners' services came to be regularized in the pay scale of Rs.4000-6000. Thereafter, a further representation was submitted after the recommendation of the VI Pay Commission and the posts of Social Welfare Officer which was earlier known as Medical Social Worker/Psychiatric Social Worker was granted the pay band of Rs.9300-34800 with Grade Pay of Rs.4500. The Government also appointed One Man Commission and a further revision was effected in the same Pay Band based on the recommendation of One Man Commission raising to Grade Pay as Rs.4600 instead of Rs.4500. However, the petitioners continued to be treated as Social Workers and paid the pay scale of Rs.4000-6000 (pre revised) notwithstanding P.G.qualification possessed by the petitioners. According to the petitioners, there was a gross injustice meted out to them by equating their posts to that of Social Worker which post

prescribed only a pass in Matriculation. Since the representations submitted by the petitioners have not evoked any response, the petitioners are before this Court, seeking Writ of Mandamus to direct the respondents to grant them appropriate pay scale as applicable to the post of Social Welfare Officer in commensurate with their qualification.

5. Shri N.G.R.Prasad, learned counsel appearing for the petitioners would draw the attention of this Court to G.O.Ms.No.793 dated 21.10.1994, wherein, the Government has prescribed pay scale of Rs.1820-3200 for the post of Medical Social Worker/Psychiatric Social Worker and Rs.1200-2040 for the post of Social Worker. He would also draw the attention of this Court to para 3 of the said G.O., which reads as under:

“3. The Government have carefully examined the recommendation of the Director of Medical Education. Accordingly, the Government direct that the post of Psychiatric Social Worker

and Medical Social Worker in the scale of pay of Rs.1820-60-2300-75-3200 with Post Graduate qualification be merged and unified as a category and be redesignated 'Social Welfare Officer in the same scale.'"

6. According to the learned counsel, the merger contemplates re-designation of post Medical Social Worker/Psychiatric Social Worker as 'Social Welfare Officer' with P.G.qualification with pay scale of Rs.1820-3200. The learned counsel would also draw the attention of this Court to the qualification prescribed for Medical Social Worker, wherein, the qualification prescribed was M.A. in Social work and Medical & Psychiatric Social work as special branch of study from any recognized University approved by UGC. The learned counsel would also draw the attention of this Court to the revised pay scale applicable to the post as per recommendation of V Pay Commission as Rs.5900-9900. The learned counsel would also draw the attention of this Court to

the said G.O. which prescribed minimum qualification of general education for the post of Social Worker with lesser pay scale of Rs.4000-6000.

7. While so, another Government Order was issued in G.O.Ms.No.144 dated 30.04.2007, wherein, the post of Medical Social Worker and Psychiatric Social Worker were given the pay scale of Rs.4000-6000 as that of Social Worker, treating both the posts as equal when the posts were sanctioned in Government Thoothukudi Medical College Hospital, Thoothukudi, against the said posts, the petitioners came to be appointed. At the same time, the learned counsel would also draw the attention of this Court to G.O.Ms.No.50 dated 4.2.2009 wherein, there was a sanction of posts of Medical Social Worker in Dharmapuri Medical College, with prescription of pay scale of Rs.5900-9900. In fact, according to the learned counsel, 3rd respondent vide his letter dated 17.7.2009 addressed to the 2nd respondent, has strongly

recommended the grant of pay scale of Rs.5900-9900 to the petitioners. He would further draw the attention of this Court to G.O.Ms.No.202, dated 21.06.2012, wherein, the post of Social Welfare Officer was sanctioned in Kilpauk Medical College, with pay scale of Rs.9300-34800 with Grade Pay of Rs.4600 which was equivalent to pre-revised pay scale of Rs.5900-9900. Therefore, the learned counsel would submit that obviously there appears to be a glaring pay anomaly while prescribing the pay scale applicable to the post of Medical Social Worker/Psychiatric Social Worker and the petitioners herein although P.G.Degree holders in the appropriate specialization, have been given a raw deal by equating them with the post of Social Worker with Matric qualification and granted lower pay scale of Rs.4000-6000. In fact, in subsequent two G.Os. referred to above, the Government sanctioned proper pay scale in respect of the posts sanctioned in Dharmapuri Medical College and Kilpauk Medical College respectively, prescribing the pay scale at Rs.5900-9900 and

revised the pay scale accordingly based on the recommendation of VI Pay Commission in the Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600. He would therefore submit that although the petitioners accepted the appointment hoping that the Government would rectify the pay anomaly in future, however, despite lapse of several years and also coming into force the recommendations of VII Pay Commission, glaring anomaly in the grant of proper pay scale to the petitioners, remained unresolved. Therefore, these petitioners are constrained to approach this Court in order to rectify their pay anomaly and seeking parity of treatment in comparison to the Social Welfare Officer and the pay scale applicable to the said post.

8. After notice, Mr.V.Kathirvelu, learned Special Government Pleader entered appearance on behalf of the respondents and a detailed counter affidavit has been filed.

9. Learned Special Government Pleader at the out set would submit that the writ petitions are not maintainable for the simple reason that the petitioners herein with their eyes wide open, have accepted the appointment with the pay scale of Rs.4000-6000 (pre revised) and having accepted the appointment and working for number of years, they ought not to be allowed to turn around and seek for higher fixation of pay scale. According to the learned Special Government Pleader, having accepted the appointment without protest, they are estopped from making any further claim for grant of higher pay scale.

10. Learned Special Government Pleader would also submit that the post of Medical Social Worker was not re-designated as Social Welfare Officer since the adhoc/special Rules governing the posts are not amended yet and while the posts were sanctioned vide G.O.Ms.No.144 dated 30.4.2007, the same were created only with pay scale of Rs.4000-6000 and on the basis of said sanction alone, these petitioners

came to be appointed. Therefore, the grant of pay scale of Rs.4000-6000 was perfectly in order and therefore, the claim for fixation of higher pay scale of the petitioners herein is untenable and cannot be considered in view of the said G.O. As regards the prescription of higher pay scale of Rs.5900-9900 in respect of the posts in two hospitals, viz., Dharmapuri Medical College and Kilpauk Medical College, those appointments were made subsequent to the appointment of the petitioners by different Government Orders and therefore, the petitioners cannot compare their appointment to those appointments. Finally, the learned Special Government Pleader would submit that the Government is the appropriate authority to fix the pay scale to various posts and if the petitioners were not happy with the pay scale applicable to their posts, they ought to have rejected the offer of appointment. Having decided to join the post in 2008, it is too late in the day for the petitioners to claim that they had been given wrong pay scale. Even otherwise, the learned Special

Government Pleader would eventually submit that the post identification is to be done for re-designation and the amendment of the said adhoc/special rules are under process which are to be issued shortly and thereby the anomalies raised in the posts created in various medical institutions would be rectified and subsequently, the pay scales are to be fixed. Therefore, he would submit that even otherwise the present challenge is premature since the Government is looking into the aspect of pay anomaly and the amendment is contemplated in the adhoc/special Rules.

11. Considered the submissions made by the learned counsel appearing for the petitioners and the learned Special Government Pleader for the respondent and perused the entire materials placed on record.

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12. The first and foremost issue to be considered in these Writ Petitions is, that admittedly there appears to be a glaring

pay anomaly while fixing the pay scale of the petitioners at the time of their appointment since it is admitted in the counter affidavit in more than one place that the State is yet to identify the posts sanctioned in various Medical Colleges in the State of Tamil Nadu for the purpose of redesignation and fixation of proper pay scale and the process of amending the Adhoc/Special Rules is underway and the issue would be decided shortly, which means that the Government itself has recognized the glaring anomaly as pointed by the learned counsel appearing for the petitioners.

13. From the above narrative of facts, it could be seen that the petitioners herein have been in possession of P.G.degree in Social Work and Medical Social Work and when they are having P.G.qualification, they came to be appointed as Medical Social Worker/Psychiatric Social Workers. But unfortunately, in the G.O. which sanctioned the post/appointment, i.e. G.O.Ms.No.144 dated 30.04.2007, the

posts have been equated with the post of Social Worker with Matric qualification and granted the pay scale of Rs.4000-6000 (pre revised). The anomaly in fixation of pay scale is so glaring and writ large on the face when the petitioners who are in possession of P.G.qualification with specialized subjects are being equated with the post of Social Worker with Matric qualification. Therefore, right from the date when these writ petitioners came to be appointed, there has been pay anomaly and though the representations were made by the petitioners, unfortunately, the same have not been considered by the competent authority and no decision has been taken in the matter.

14. Moreover, the concept of equality means in the Constitutional parlance if the unequals are not treated as equals and place them on the same pedestal in the matter of grant of pay scale. In this case, the difference between two classes of employees, namely, Medical Social

Worker/Psychiatric and Social Worker is too conspicuous and distinct for the posts to be treated as one class for the purpose of grant of same pay scale of Rs.4000-6000. Such treatment of the posts by the Government in the circumstances of the case, has to be discountenanced outright by this Court. By such clubbing of two unequal posts by the Government and granting lower pay scale to these petitioners with P.G.qualification by equating them with Social Worker with Matric qualification, is per se preposterous, arbitrary, irrational and unreasonable and cannot be countenanced both in law and on facts. It is a clear case of violation of principles of equality enshrined in Article 14 of the Constitution of India. Article 14 of the Constitution is not only to secure ends of justice between equals, but also to prevent miscarriage of justice in treating two different and distinct classes as equals.

15. In the present case, one need not painstakingly

unravel at the intelligible differentia between the posts of Social Worker and Medical Social Worker/Psychiatric Social Worker, as the distinct nature of posts and qualification is too glaring and writ large to be ignored. Any person with little common sense can understand the obvious difference between these two posts and in such situation, the fixation of same pay scale for both posts amounts to unfair treatment to the petitioners who are possessing higher qualification than the persons who work as Social Workers with Matric qualification. It is very unfortunate that the Government has shut its eyes and ears to adduce the legitimate request of the petitioners for revision of their pay scale all these years.

16. In the entirety of the counter affidavit filed on behalf of the respondents, the principal objections seem to be that the petitioners herein have accepted the appointment without demur and therefore, they are estopped from protesting against the grant of pay scale of Rs.4000-6000. Such

objection cannot hold good for the reason that when a constitutional right of the petitioners herein is affected particularly in terms of Article 14 of the Constitution, there cannot be a plea of estoppel which can be successfully pleaded against the petitioners by the Government. Once a citizen establishes his right to be treated equally, such right cannot be negated under any circumstances even assuming that the petitioners herein have accepted the appointment without any demur.

17. In this case, after considering all the aspects and also particularly in view of the fact that subsequently the Government have sanctioned the post of Social Welfare Officer in Dharmapuri Medical College vide G.O.Ms.No.50 dated 4.2.2009 and another creation of post vide G.O.Ms.No.202 dated 21.06.2012 in Kilpauk Medical College wherein the Government itself prescribed the pay scale of Rs.5900-9900 (pre revised) and Rs.9300-34800 with Grade Pay of Rs.4600

(revised), this Court is unable to comprehend as to how these petitioners alone can be singled out from discriminated arbitrary treatment at the hands of the State.

18. In the circumstances, this Court is of the considered view that it is high time for the Government took a decision to comprehensively amend the Ad hoc/Special rules governing the subject posts in terms of their own averments as contained in the counter affidavit at an early date in order to set right the anomaly and to resolve the legitimate grievance of the petitioners herein so that their longing for fair treatment is answered to their advantage and proper status to them is restored commensurate with their P.G.qualification.

19. For the above said reasons, this Court has no hesitation in allowing the Writ Petitions. Accordingly, the Writ Petitions are allowed. The respondents are directed to re-designate the post of Medical Social Worker in terms of

G.O.Ms.No.793 Health and Family Welfare Department dated 21.10.1994 and pay the corresponding scale of pay as Rs.5900-9900 in terms of G.O.Ms.No.162 Finance Department dated 13.04.1998 and extend the corresponding revision of pay scale on that basis. The first respondent is also directed to take immediate steps to amend if necessary Ad hoc/Special Rules in this regard to enable these petitioners to be paid equal pay as that of Medical Social Welfare Officer and if any amendment is made, the same is to be given effect notionally from the date of when the petitioners starting discharging duties as Medical Social Worker/Psychiatric Social Worker with all other attendant benefits. The first respondent is also directed to take appropriate action and pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

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Index: Yes/No
Internet: Yes/No

30.09.2019

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare (E2) Department,
Fort St.George, Chennai-600 009.

2. Director of Medical Education,
rep. by its Director,
Kilpauk, Chennai-600 010.

3. Institute of Mental Health,
rep. by its Director,
Kilpauk, Chennai-600 010.



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V.PARTHIBAN, J.

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Order in WP.Nos.32338
& 32445 of 2017

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