

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 14.06.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.8875 of 2015**

A.Bathurdeen

... Petitioner

vs.

1. The District Collector
Ramanathapuram District
Ramanathapuram

2. The Assistant Director
Local Fund Audit
Ramanathapuram

3. The Panchayat Union Commissioner
Thirupullani
Ramanathapuram Taluk & District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the second and third respondents i.e., the Assistant Director of Local Fund Audit, Ramanathapuram and the Panchayat Union Commissioner, Thirupullani to settle the issue referred to in memo No.A1/2978/14 dated 19.03.2015 of the Panchayat Union Commissioner, Thirupullani regarding the refund of the DCRG amount withheld in the light of the orders of the High Court in W.P.(MD) No.3268 of 2006 dated 11.09.2006 within a period stipulated by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Dhayalan
Government Advocate for R1 & R2
Mr.R.Velmurugan for R3

O R D E R

The relief sought for in the present writ petition is to direct the respondents 2 and 3 to settle the issue referred to in the Memo, dated 19.03.2015, regarding the refund of withheld DCRG amount, in the light of the order dated 11.09.2006 passed by this Court in W.P.(MD) No.3268 of 2006, within a stipulated time.



2. The writ petitioner was employed as a Rural Medical Practitioner and retired from service on 31.12.1997. The period of service was extended for a further period of two years and the writ petitioner had successfully completed the extended period of service and he was allowed to retire from service.

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3. The grievance of the writ petitioner is that in respect of the payment of DCRG, there was a dispute with reference to the cadre of Rural Medical Practitioner and the issue was settled by the Honourable Division Bench of this Court, vide order dated 19.04.2006 in W.P.Nos.30003, 30750 etc., of 2004 and based on the orders of the Honourable Division Bench, a final order was passed in W.P.(MD) No.3268 of 2006 on 11.09.2006. The relevant portion of the said order is extracted hereunder:

"4. The learned counsel for the petitioners as well as the learned Special Government Pleader submit that the matter in issue is covered by a Judgment of this Court made in W.P.Nos.30003, 37050 etc., of 2004, dated 19.04.2006, wherein, the Division Bench of this Court has held as follows:

G.O.M.S.No.250, dated 14.09.2000 in so far 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 time 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.M.S.No.250 dated 14.09.2000, in so far 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.M.S.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.

The petitioners are entitled to all service benefits including pension and other benefits as per law. Any order passed by the authorities for recovery of the amounts based on G.O.M.S.No.250 dated 14.09.2000, in respect of payments already made in accordance with rules and regulations, is not sustainable in law. Further, the orders of the respondents



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revising the pay scale or denying the benefits based on the abovesaid G.O.M.S.No.250 dated 14.09.2000, also are not sustainable. All proceedings which are the subject matters of challenge before this Court based on the above said G.O.M.S.No.250 dated 14.09.2000, denying the benefits are liable to be set aside. Hence, the impugned orders of the authorities in so far as they relate to recovery of the amount paid to the petitioners, are quashed. The impugned orders where the authorities have refused to grant the terminal benefits, pay, pension, etc., based on the aforesaid G.O.M.S.No.250 dated 14.09.2000 are quashed and there will be a direction to settle their claims as prayed for.

All the benefits applicable to the petitioners / Rural Medical Officers based on the order of the learned single Judge in W.P.No.863 of 1989, dated 08.03.1995, as confirmed by the Division Bench of this Court in W.A.No.922 of 1995 etc., dated 01.02.1996 and the subsequent Government Orders, shall be properly calculated and paid to the petitioners. Needless to say that all the terminal benefits applicable including the pensionary benefits, shall be paid to the petitioners / Rural Medical Officers, who are appointed and serving prior to passing of G.O.M.S.No.250 dated 14.09.2000, without any discrimination. It is made clear that based on the time scale of pay fixed, they will be entitled to all consequential benefits applicable to Government Servants. The recovery if any already made should be refunded.

5. In view of the said order of the Division Bench of this Court, there will be a similar order in this case also, similar to paragraph 40 to 42 of the Judgment referred to above."

4. Pursuant to the orders of this Court, the Government also issued G.O.(Perm) No.164, Rural Development and Panchayat Raj Department, dated 24.09.2007, with reference to the writ petitioners in W.P.Nos.30003, 30750 etc., of 2004 and accordingly, DCRG was calculated as claimed by them and the withheld amounts were also settled in their favour.



5. The learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent states that the withheld amount of the writ petitioner had been remitted into the Village Panchayat Consolidated Fund and only after getting sanction from the second respondent, the said amount will be refunded to the writ petitioner.

6. Except this, the issues settled by this Court as well as the Government Order issued in this regard are not disputed by the respondents. In view fact that the issues in respect of DCRG with reference to the Rural Medical Practitioners are settled, the writ petitioner is also entitled for refund of the withheld DCRG amount as per the orders of this Court as well as the Government Order, which was issued implementing the orders of this Court.

7. Accordingly, the writ petition is allowed and the respondents 2 and 3 are directed to reimburse the withheld DCRG amount to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The District Collector,
Ramanathapuram District, Ramanathapuram.
2. The Assistant Director,
Local Fund Audit, Ramanathapuram.
3. The Panchayat Union Commissioner
Thirupullani, Ramanathapuram Taluk & District.

- + 1 CC TO Mr.S.Visvalingam, ADVOCATE IN SR No.69138
- + 1 CC to The Special Government Pleader SR.No.69269
- + 1 CC TO Mr.R.Velmurugan, ADVOCATE IN SR No.69105

W.P. (MD) No.8875 of 2015

14.06.2019