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W.M.P. Nos. 7749 and 7752 of 2021

**W.M.P. Nos. 7749 and 7752 of 2021
in
W.P. Nos. 32338 and 32445 of 2017**

P.D. AUDIKESAVALU, J.

These Miscellaneous Petitions have been filed by the First and Second Respondents in W.P. Nos. 32338 and 32445 of 2017 to clarify the order dated 03.09.2019 passed in those Writ Petitions by this Court. The parties are hereinafter referred to as per their description in the Writ Petitions for the sake of clarity and convenience.

2. Heard Mr. N.G.R.Prasad, Learned Counsel for the Petitioners, Mr. S.Silambanan, Learned Additional Advocate General assisted by Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The Petitioners in W.P. Nos. 32338 and 32445 of 2017 have been selected to the post of 'Medical Social Worker' in Government Medical College Hospital,



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Vellore and Government Medical College Hospital, Thoothukudi respectively in furtherance to the notifications prescribing the academic qualification of a Master's Degree in Social work with Medical and Psychiatric Social Work as special branch of study of any University recognized by Government of Tamil Nadu or any other qualification equivalent to those mentioned above. The pay scale for the said post of 'Medical Social Worker/Psychiatric Social Worker', which was later re-designated as 'Social Welfare Officer', as per the recommendations of the VI Pay Commission was in the pay band of Rs. 9300 - 34800 with grade pay of Rs. 4500 and had been later raised to Rs. 4600. However, from the time of appointment of the Petitioners, despite their representations made, they had been erroneously treated as working in the post of 'Social Worker' for which the prescribed qualification was pass in Matriculation and had been paid emoluments in the lower scale of Rs. 4000 – 6000 for that post, which necessitated them to file the Writ Petitions in W.P. Nos. 32338 and 32445 of 2017 in this Court.

4. After hearing both parties, this Court by an elaborate order dated 30.09.2019 concluded as follows:-

“19. For the above said reasons, this Court has no hesitation in allowing the Writ Petitions. Accordingly, the Writ Petitions are



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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.”

It is not in dispute that the Government of Tamil Nadu has issued G.O. (Ms). No. 34, Health and Family Welfare (AA1) Department dated 11.02.2019 making amendments to the Special Rules for the Tamil Nadu Medical Subordinate



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Services which have come into force with retrospective effect from 21.10.1994, but as the consequential monetary benefits have not been extended to the Petitioners in these cases, they have filed Contempt Petition Nos. 374 and 399 of 2020 in this Court.

5. At that stage, the First and Second Respondents have filed these Miscellaneous Petitions seeking clarification that the word 'notionally' mentioned in para 19 of the aforesaid order would not entitle the Petitioners to receive the actual amount of monetary benefits before the date of amendments to the statutory rules on 11.02.2019, though they have been given effect from 21.10.1994 retrospectively.

6. As already noticed, the Petitioners had been selected against vacancies in the post of 'Medical Social Worker' with post graduate qualification of Master's Degree in Social Work with Medical and Psychiatric Social Work as special branch of study of any University recognized by Government of Tamil Nadu, which they admittedly possess and have been discharging the duties in that post from the time of their appointment till date. They had been denied the full amount of the pay scale that had been prescribed for that post in the recommendations of



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the VI Pay Commission on account of discrepancies in the name of that post in

the relevant statutory rules, which were required to be corrected by this Court,

and the same has also been carried out by making amendments to the statutory

rules in G.O. (Ms). No. 34, Health and Family Welfare (AA1) Department dated

11.02.2019 with effect from 21.10.1994 retrospectively. It is evident from the

aforesaid facts borne out from the record that the Petitioners were in no way

responsible for that time taken and when it is accepted that they have discharged

the duties in that post for which they had been selected from the respective dates

of their appointment, there does not appear to be any reason to deprive them of

the full amount of the pay scale that they were eligible for the period they had

actually worked. It would assume significance here that in respect of two other

persons, viz., G.Barathi and S.Hidhayathun Nooria, who had been selected to the

same post in the Institute of Mental Health, Kilpauk, Chennai, were conversely

granted the full amount of the pay scale from the time of their appointment and

when the concerned authorities sought to recover 'excess payment' after noticing

that other persons similarly placed to them, like the Petitioners in these cases,

had been paid a lesser amount by applying the pay scale for the post of 'Social

Worker' prescribing the minimum qualification of Matriculation, they had filed

the Writ Petitions in W.P. Nos. 27932, 27933, 27934 and 27947 of 2017 and this



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Court by order dated 11.03.2022 required the authorities to re-examine the matter taking note of the amendments made to the statutory rules with retrospective effect from 21.10.1994 in G.O. (Ms). No. 34, Health and Family Welfare (AA1) Department dated 11.02.2019 issued by the Government of Tamil Nadu. In this backdrop, it would be useful to recapitulate the observations made by the Hon'ble Supreme Court of India in ***State of Punjab -vs- Jagjit Singh*** [(2017) 1 SCC 148], as extracted below:-

“58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position.



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*Undoubtedly, the action is oppressive, suppressive and coercive,
as it compels involuntary subjugation."*

Viewed from the perspective to that binding dictum, which squarely applies to the fact situation that has arisen in this case, the word 'notionally' used in para 19 of the order dated 30.09.2019 passed in the Writ Petitions, in the context of giving effect to the required amendments retrospectively, could not have been misunderstood by the concerned authorities as an excuse to deny the consequential monetary and attendant benefits that the Petitioners are legitimately entitled to receive for their actual period of working in the post to which they had been appointed, which militates against the spirit of that order.

7. The result of the foregoing discussion is that the common order dated 30.09.2019 in W.P. Nos. 32338 and 32445 of 2017 is clarified to the effect that the Petitioners shall be paid the full amount of the pay scale prescribed for the post of 'Medical Social Worker' from the respective dates of their appointment and that the differential amount due to them shall be paid along with a working-sheet showing calculation for the same by 31.12.2022 under written acknowledgment and a report of compliance shall be filed before the Registrar (Judicial) of the Court in that regard.



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Accordingly, these Miscellaneous Petitions are disposed on the aforesaid terms.

09.11.2022

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Note: Issue order copy by 18.11.2022.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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