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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.10.2021
Pronounced On	12.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.17041 & 22490 of 2021 and
W.P.No.19391 of 2020
and

W.M.P.Nos.18071 & 18072 of 2021
and W.M.P.No.23984 of 2020

(Through Video Conferencing)

W.P.No.17041 of 2021

T.M.Vidhya

... Petitioner

Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
 2. The Secretary to Government,
Finance Department,
Fort St.George, Chennai - 600 009.
 3. The Director of Public Health
and Preventive Medicine,
Chennai - 600 006.
 4. The Deputy Director of Health Services,
Tiruvallur Health Unit District, Tiruvallur District.
 5. Karpaga Vinayagar Medical College,
Chinnakolambakkam, Maduranthakam,
Kancheepuram District.
- ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the order in G.O. (Ms) No.46, dated 07.02.2020 passed by the first respondent and quash the same as far as the petitioner is concerned and consequently direct the first to fourth respondents to grant



salary to the petitioner like the candidates those who are secured admission in the Post Graduate Degree / Diploma and Super Specialty / Broad Specialty Course in the Self Financing Private Medical College hail from Government Medical Colleges and thereby treat equally those who are completing the P.G. in the Self Finance College without any discrimination.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.S.Mahendran

For R1 to R4 : Mr.L.S.M.Hasan Fizal
Government Advocate

W.P.Nos.22490 of 2021 and 19391 of 2020

Dr.C.Chindhu ...Petitioner in W.P.No.22490/2021

- 1.Dr.Goutham Raj. S
- 2.Dr.Nithya,
- 3.Dr.P.Vidhya
- 4.Dr.Hubert Praveen Abner. R
- 5.Dr.Divya Vasudevan
- 6.Dr.R.Aravind
- 7.Dr.R.Soundara Rajan
- 8.Dr.Sowmyaa. P
- 9.Dr.Sri Gowtham Subramaniam
- 10.Dr.S.Vishnu Priyangan
- 11.Dr.M.S.Arun
- 12.Dr.Kannan. R
- 13.Dr.S.Priyadharshini
- 14.Dr.S.Shenbagaraj
- 15.Dr.S.Balasubramanian
- 16.Dr.Suji. M

17.Dr.J.Asvini



18.Dr.R.Arul Bhagyaraj

19.Dr.M.Lilly Malar

...Petitioners in W.P.No.19391/2020

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Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Director of Medical and Rural Health
Services,
DMS Compound, Anna Salai,
Chennai - 600 006.
4. The Director of Public Health and Preventive
Medicine,
DMS Compound, Anna Salai,
Chennai - 600 006.

...Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare that Clause 8(iii) of the order of Government issued in G.O.Ms.No.46, Health and Family Welfare (B1) Department, dated 07.02.2020 relating to non-sanctioning of salary for in-service candidates secured admission in Post Graduate Medical Courses in Government seats in Self Financing Medical Colleges, not applicable for the academic session 2019-2020 commencing from May 2019 and consequently direct the respondents to sanction salary benefits to the petitioners for the period of study from May 2019 onwards in terms of G.O.Ms.No.94, Health and Family Welfare (B1) Department, dated 01.03.2016 with all consequential and other attendant benefits.

For Petitioners : Mr.G.Sankaran in both W.Ps.

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate



COMMON ORDER

By this common order, all the Writ Petitions are being disposed.

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2. These Writ Petitions have been filed by the respective petitioners for the following relief :-

W.P.No.17041 of 2021	W.P.Nos.22490 of 2021 & 19391 of 2020
For issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the order in G.O. (Ms) No.46, dated 07.02.2020 passed by the first respondent and quash the same as far as the petitioner is concerned and consequently direct the first to fourth respondent to grant salary to the petitioner like the candidates those who are secured admission in the Post Graduate Degree / Diploma and Super Speciality / Board Speciality Course in the Self Financing Private Medical College hail from Government Medical Colleges and thereby treat equally those who are completing the P.G. In the Self Finance Private Colleges without any discrimination.	For issuance of a Writ of Declaration, to declare that Clause 8(iii) of the order of Government issued in G.O.Ms.No.46, Health and Family Welfare (B1) Department, dated 07.02.2020 relates to non-sanctioning of salary for in-service candidates secured admission in Post Graduate Medical Course in Government seats in Self Financing Medical Colleges, not applicable for the academic session 2019-2020 commencing from May 2019 and consequently direct the respondents to sanction salary benefits to the petitioner for the period of study from May 2019 onwards in terms of G.O.Ms.No.94, Health and Family Welfare (B1) Department, dated 01.03.2016 with all consequential and other attendant benefits.

3. The petitioners (in-service candidates) have challenged G.O.Ms.No.46, Health and Family Welfare (R1) Department, dated 07.02.2020 in these Writ Petitions and prayed for a direction to the respondents to sanction salary benefits to the petitioners.

4. The petitioners were appointed as Assistant Surgeons in the Tamil Nadu Medical Services vide Notifications issued by the Tamil Nadu Medical Service Recruitment Board. Some of the petitioners are pursuing P.G. Degree / Diploma Course in Self Financing Medical Colleges during 2019 while some in 2020. They have been denied to the salary.

5. It is submitted that the petitioners (Medical Officers in Government of Tamil Nadu) are undergoing P.G. Degree / Diploma Course in Self Financing Medical Colleges have been



denied to the salary whereas the petitioners contemporaries and batch mates who are undergoing similar P.G. Degree/Diploma Course in Government Colleges/Institutions have been given the benefit of salary.

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6. The petitioners are governed by the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the Rules as in force including the Fundamental Rules of the Tamil Nadu Government which came into force with effect from 1st January, 1922.

7. It is submitted that out of the total number of Post Graduate Degree / Diploma seats in Medical Colleges in Tamil Nadu, 50% of seats have been surrendered to All India Quota and out of the remaining 50%, again 50% have been earmarked to Open Competition for Non-Service candidates.

8. It is therefore submitted that after introducing the National Eligibility cum Entrance Test (NEET), the admission of the P.G. Medical Courses is based on Regulation 9 of the Medical Council of India Post Graduate Medical Regulations, 2000 and therefore there was only 25% of the seats for in-service candidates.

9. It is submitted that the Government of Tamil Nadu had earlier issued G.O.Ms.No.94, Health and Family Welfare Department, dated 01.03.2016. It is submitted that as per the above Government Order, the Medical Officer in the Tamil Nadu Medical Services undergoing P.G. Courses in Self Financing Institutions shall be paid pay and allowances on par with the in-services candidates undergoing P.G. Degree in Government Colleges.

10. It is submitted that as per G.O.Ms.No.94, Health and Family Welfare Department, dated 01.03.2016 that in-service candidates were required to execute a Bond and furnish an undertaking that they will work in the Government Medical Institutions till their superannuation after completion of courses and any future increase in fee as fixed by the Fee Committee will be met only them.

11. It is submitted that the Government of Tamil Nadu later issued G.O.(Ms) No.63, Health and Family Welfare (B1) Department dated 07.03.2017 and extended the benefits of salary and other service benefits to Government Medical Officers undergoing P.G. Medical Course in Self Financing Medical Colleges from the year 2013 onwards.

12. It is submitted that the intention of the Government while issuing the above G.Os. was to ensure that these Medical Officers undergoing P.G. Course either in the Government Medical College or in the Government Seats in the Self Financing Private Medical Colleges on after completion of their courses should revert back to Government duties.



13. It is submitted that the impugned G.O.Ms.No.46, Health and Family Welfare (R1) Department, dated 07.02.2020 has reversed the decision aken earlier and therefore persons like petitioners who are undergoing P.G. Courses in Self Financing Private Medical Colleges are being denied salary and other service benefits.

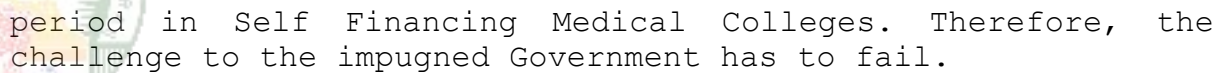
14. Opposing the prayer of the petitioner, the learned Government Advocate appearing for the respondents submits that there are following four mode of admission were followed till 2016-2017 in Post Graduate Degree / Diploma / Super Speciality Course in Tamil Nadu Government Medical Colleges : -

- i. 50% of total available seats were surrendered to Government of India as All India Quota
- ii. 25% of seats were reserved for "in service" Medical Officers in Tamil Nadu Medical Service based on the marks obtained in the Post Graduate Entrance conducted by the Selection Committee, Office of the Director of Medical Education.
- iii. 25% of seats were filled up by non-service candidates under the State Quota.

15. It is submitted that 65% of the seats in Non-Minority Self Financing Private Medical Colleges and 50% of the seats in Minority Self Financing Private Medical Colleges were surrendered to the State Quota of 25% of seats. It is specifically submitted that the State Quota reserved in the both Minority and Non-Minority Private Institutions are filled up by the Single Window System of Selection Committee of the Directorate of Medical Education by way of counseling and the balance Management Quota is filled up by the Management of the Self Financing Private Medical Colleges.

16. It is submitted that as per the norms of the admission 2019-2020, those candidates who have secured seats through the State Quota in the Government Medical Colleges/Rajah Muthiah Medical College, Chidambaram are eligible of stipend /salary.

17. It is also submitted that the service candidates who do not get seat in Government Medical Colleges go to the Self Financing Medical Colleges/ Deemed Medical Universities for furthering their career prospect and are not rendering any public duty in Government Medical Colleges during their study



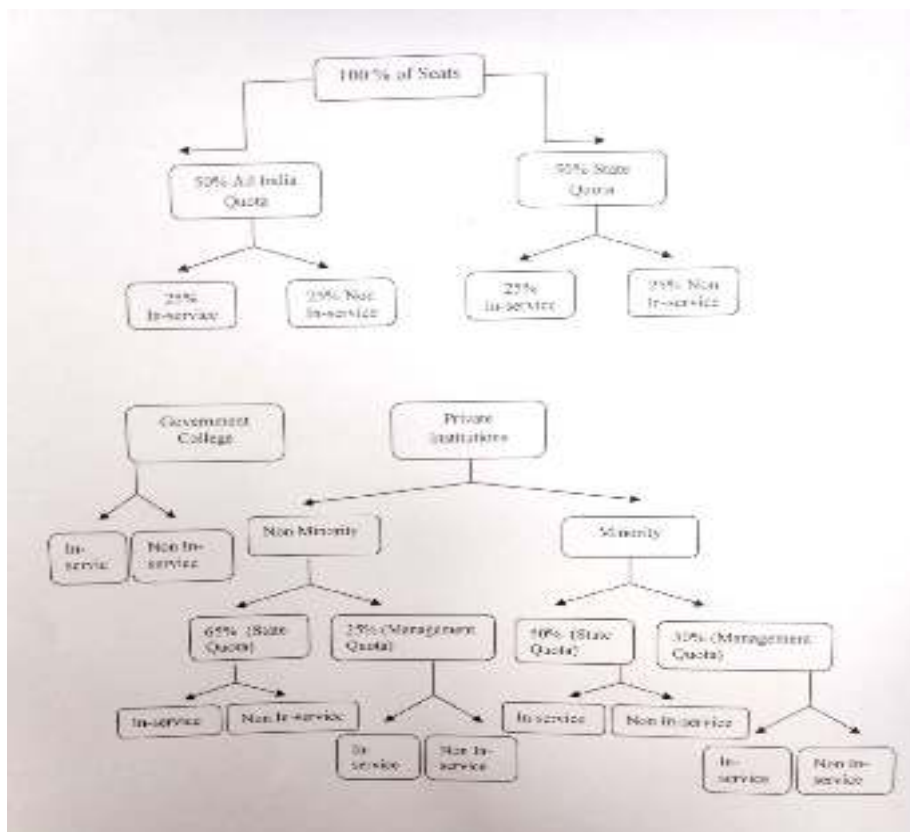
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24. The candidates from the State are also entitled for admission against the State Quota and All India Quota and depending upon the marks secured by them for a discipline, they get selected during the counseling and are sent to different institutions. Thus, at the PG level also, both the



in-service candidates like petitioners and others from the State get selected to pursue their higher qualification in Post Graduation Degree and Diploma against the respective Quota and depending upon their marks secured by them, they are admitted either in the Government Colleges/ Institutions or in the Self Financing Medical Colleges/ Institutions.

25. Self Financing Medical Colleges/Institutions consist of both Minority and Non-Minority Private Institutions. As mentioned above, in-service candidates like others get selected into one of these Medical Colleges / Institution depending on the various factors against the vacancies and the marks secured by them. The following Flow Chat demonstrates the position:-



26. Relevant portion of the impugned G.O.Ms.No.46, Health and Family Welfare (R1) Department, dated 07.02.2020 reads as under:-

8. The Government have examined the request of the Tamil Nadu Government Doctors Association in detail and issue the following orders:



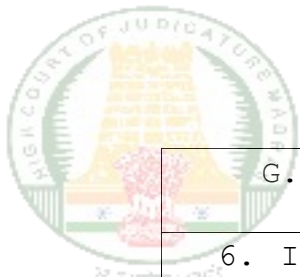
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i. The in-service candidates who secure admission in the Post Graduate Degree / Diploma Courses either through the All India Quota or through the Single Window System of counseling conducted by the Selection Committee in Government Medical Colleges including Raja Muthiah Medical College, Annamalai University, Chidambaram be sanctioned salary from 2017-18.

ii. The in-service candidates who secure admission in the Post Graduate Super Speciality / Broad Speciality Degree Courses through the counseling conducted by the Director General of Health Services in Government Medical Colleges including Raja Muthiah Medical College, Annamalai University, Chidambaram be sanctioned salary from the 2017-18 onwards; and

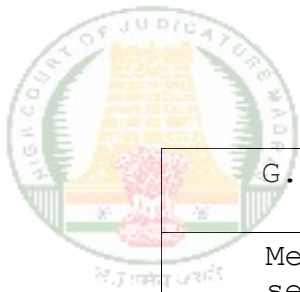
iii. In-service candidates who secure admission in Post Graduate Degree / Diploma and Super Speciality / Broad Speciality Courses in Self Financing Private Medical Colleges either through the Single Window System of counseling conducted by the Selection Committee or through the All India Quota or through the Director General of Health Services, New Delhi, will not be sanctioned salary during the period of study.

27. Prior to the impugned G.O.Ms.No.46, Health and Family Welfare (R1) Department, dated 07.02.2020, G.O.Ms.No.94, Health and Family Welfare Department, dated 01.03.2016 and G.O.(Ms) No.63, Health and Family Welfare (B1) Department, dated 07.03.2017 were in force. Relevant portion from G.O.Ms.No.94, Health and Family Welfare Department, dated 01.03.2016 and G.O.(Ms) No.63, Health and Family Welfare (B1) Department, dated 07.03.2017 are extracted under:-



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G.O. (Ms) No.94, dated 01.03.2016	G.O. (Ms) No.63, dated 07.03.2017
6. In the circumstance, the Government have decided and accordingly order as follows:- i. The Medical Officers in Tamil Nadu Medical Services undergoing Post Graduate Degree / Diploma / MCh courses in Self Financing Institutions, on selection through the Selection committee / Single Window system will be paid salary and other allowances on par with other 'Service candidates' undergoing Post Graduate Degree / Diploma / MCh courses in Government Medical Institutions. For this purpose 91 supernumerary posts are created in the Madras Medical College, Chennai at an approximate cost of Rs.5.5 crore per annum, for the purpose of claiming salary only. ii. The Prospectus for the 2016-17 and forthcoming years will be suitably modified to include this clause. 7. The orders issued in para 6 above is subject to the conditions that the Medical Officers in Tamil Nadu Medical Service who are pursuing Post Graduate Degree / Diploma / MCh course in self financing Medical Institutions on selection through Selection Committee / Single Window system: (a) will have to execute a bond / furnish an undertaking to the effect that they will work in	4. The Government have examined the request of the Medical Officers who are undergoing Post Graduate Degree / Diploma / MCh. Courses in Self Financing Institutions, on selection through Selection Committee / Single Window System along with the recommendation of the Director of Medical Education and ordered as follows: To Treat t the study period of the 29 Medical Officers in Tamil Nadu Medical Service undergoing Post Graduate Degree / Diploma / M.Ch. courses from the year 2014-2015 in Self Financing Institutions as "On Duty" for the purpose of salary, with retrospective effect from the year of joining by creating of 29 supernumerary posts from the year 2013-2014 (approximate annual expenditure - Rs.1.80 crore (Rupees One Crore Eighty Lakh only) per annum and creation of 82 supernumerary posts from the year 2014-2015 (approximate annual expenditure - Rs.4.92 crore (Rupees Four Crore Ninety Two Lakh only) per annum subject to the following conditions: i. They should work in the Government till their superannuation after completion of their Post Graduate Degree / Diploma / M.Ch.Courses and an undertaking in this regard be obtained from them.



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G.O. (Ms) No.94, dated 01.03.2016	G.O. (Ms) No.63, dated 07.03.2017
Medical Institutions on selection superannuation after completion of their course. (b) that they will not approach any court demanding reduction in fees in case of Annamalai University after getting the salary and duty benefit. (c) any future increase in fee as fixed by the fee committee or Annamalai University will be met only by them. 8. The expenditure towards pay for the posts created in para 6 above shall be debited to the following head of account.: 2210-Medical and Public Health' 05 Medical Education, Training and Research -105-Allopathy - I - Non - Plan AA Chennai Medical College 01-Salaries (DPC 2210 05 105 AA 0103) 9. The expenditure sanctioned in para - 6 above shall constitute an item of "New Instrument of Service" and the approval of Legislature will be obtained in due course. Pending approval of the Legislature, the expenditure may be initially met by drawal of an advance from the Contingency Fund. The Director of Medical Education is directed to calculate the actual amount required for the period upto next Supplementary Estimates and apply for sanction of the same as advance from the Contingency Fund to Finance Department directly in	ii. The stipend received by the candidates from the respective institutions has to be deducted from the salary to be disbursed. iii. To obtain an undertaking from the candidates that they will not approach any court demanding reduction in fees in case of Annamalai University after getting salary and duty benefit and iv. Any future increase in fee as fixed by the fee Committee or Annamalai University will be met only by them. 5. The expenditure towards pay for the posts created in para 4 above shall be debited to the following head of account.: "2210-Medical and Public Health' 05 Medical Education, Training and Research -105-Allopathy - I - Non - Plan AA Chennai Medical College 01-Salaries" (DPC 2210 05 105 AA 0103) 6. The expenditure sanctioned in para 4 above shall constitute an item of "New Instrument of Service"



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G.O. (Ms) No.94, dated 01.03.2016	G.O. (Ms) No.63, dated 07.03.2017
Form A appended to the Tamil Nadu Contingency Fund Rules 1963 along with a copy of this order. Orders for sanction of an advance from the Contingency Fund will be issued from Finance (BG.I) Department. The Director of Medical Education is requested to send necessary explanatory notes to include the above expenditure in the Supplementary Estimates for the year 2016-17 to Finance Department at the appropriate time without fail.	and the approval of Legislature will be obtained in due course. Pending approval of the Legislature, the expenditure may be initially met by drawal of an advance from the Contingency Fund. The Director of Medical Education is directed to calculate the actual amount required for the period upto next Supplementary Estimates and apply for sanction of the same as advance from the Contingency Fund to Finance (BG.I) Department directly in Form A appended to the Tamil Nadu Contingency Fund Rules 1963 along with a copy of this order. Orders for sanction of an advance from the Contingency Fund will be issued from Finance (BG.I) Department. The Director of Medical Education is requested to send necessary explanatory notes to include the above expenditure in the Supplementary Estimates for the year 2017-18 to Finance Department at the appropriate time without fail.

28. In-service candidates being government servants are governed by the provision of the Fundamental Rule and their leave rights are governed by the provisions of the aforesaid Rules. Rule 66 of the Fundamental Rules recognises the following kind of leaves to be sanctioned by the authority:-

- i. Earned Leave, Unearned Leave on Medical Certificate, Unearned Leave on Private Affairs, Extraordinary Leave, Maternity Leave, Hospital Leave.
- ii. Earned Leave not exceeding 120 days other than Leave preparatory to retirement.
- iii. Special Disability Leave.

iv. Study Leave.



29. Without doubt, the time undertaken by in-service candidates while pursuing their P.G. Course whether in Self Financing Private Medical Colleges/Institutions or in Government Colleges/Institutions in the relevant discipline would be covered the categorized as a "Study Leave". The Fundamental Rule makes no distinction between courses pursued in Government Colleges / Institutions and Private Colleges / Institutions.

30. As per Rule 84 of the Fundamental Rules, leave may be granted to the Government Servants, on such terms as the Government may, by general order prescribe, to enable them to study scientific, technical or similar problems or to undergo special course of instruction. Such leave shall not be debited against the leave account. Rule 84 of the Fundamental Rules is reproduced below:-

84. Leave may be granted to Government servants, on such terms as the Government may, by general order prescribe, to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave shall not be debited against the leave account.

Note.- The rules prescribed to regulate the grant of leave to Government servants for the study of scientific, technical and similar problems or to undergo special courses of instructions are given in Appendix II.

RULINGS.

Study allowance for the period of private work during study leave.

(1) The Government of India and the State Government have agreed to the grant of study allowance to officers for the period during study leave devoted to the collating and elaborating in the form of readable report of the notes made and literature collected during their tour of inspection.

In the case of an officer granted study leave with the object of taking a definite course of study or preparing for a specific examination, attendance at an institution or supervision by a responsible authority is the normal procedure. The Study Leave Rules should be more strictly adhered to in this case and private work at home is not, therefore, accepted for purposes of study leave.

(G.O. Ms. No. 887, Finance, dated 19th December 1929.)



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(2) A Government servant of a vacation department can draw study allowance during vacation if he prosecutes his studies during the period. The period of such vacation will be taken into account in calculating the maximum period of two years for which study allowance is admissible.

[Paragraph 22 (ii), Chapter X, Section 1 of Manual of Audit Instructions (Reprint).]

(3) Study leave may be granted to an officer of less than five years' service at the discretion of the authority competent to grant the leave.

[Ruling (33), Section IV of Compilation of Audit Rulings.]

(4) Scholarship or stipend received by a Government servant from the Consolidated Fund of India or Consolidated Fund of a State is treated as honorarium under Fundamental Rule 9 (9). It is only when a Government servant is awarded scholarship or stipend from a source other than the above two sources, it will have to be treated as fees.

No portion of any scholarship or stipend, received during study leave or otherwise, by a government servant from a source other than Consolidated Fund of India or the Consolidated Fund of State for the purpose of prosecuting a course of studies or receiving specialized training in professional or technical subjects need be credited to Government.

In cases where permission is granted by the Government, no portion of the payments received by Government servants as a result of full-time or part-time employment undertaken by them need be credited to the Government.

(Finance Memo. No. 30909/FR/60-4, dated 16th May 1960.)

(5) The Government servants, who are sponsored by the Government for training abroad under the various training schemes of the United Nations, the Colombo Plan, the Point Four Programme and the like and the schemes operated through non-official channels (Rockefeller Foundation, Ford Foundation and the like) should be brought under the orders issued in G.O. Ms. No. 798, Finance, dated 1st July 1962 and not under the Study Leave Rules.



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(6) A certificate to the effect that the study allowance and/or cost of fees for study is/are claimed in accordance with rules 12 and 13 and/or rule 16 of the Study Leave Rules shall be recorded in the bills by the drawing officers.

(7) Restrictions under rules 5 and 9 of these rules limiting the grant of study leave to a maximum period of two years for a Government servant's entire service shall not apply in the case of medical officers of the Tamil Nadu Medical Service to enable them to avail themselves of study leave in excess of two years, wherever necessary to undergo postgraduate courses.

These orders take effect from 1st July 1962.

(G.O. Ms. No.1942, Health, dated 5th June 1963.)

31. For the purpose of "Study Leave", the Study Leave Rules have also been prescribed. A Reading of Rule 3(5) of the Study Leave Rules which is in Annexure to the Fundamental Rules issued for the purpose of Rule 84 of the Fundamental Rules indicates that the "Study Leave" shall not be ordinarily granted to a Government Servant who has rendered less than five years or who does not hold a Group A and Group B post under the Government or who has retired or who has the option to retire from the Government Service within three years of the date on which he is expected to return to duty after the expiry the leave.

32. As per Rule 5 of the Study Leave Rules which is in Annexure issued for the purpose of Rule 84 of the Fundamental Rules, ordinarily, such leave shall not exceed 12 months at any one point of time except for exceptional reasons and further shall not exceed 24 months inclusive of study leave granted under any other rules in all during his entire carrier.

33. Rule 17 of the Study Leave Rules in Annexure to the Fundamental Rule contemplates the Execution of a Bond in Form "A" before proceeding for "Study Leave" or for extension of "Study Leave".

34. As per Rule 19 of the Study Leave, a Government Servant is entitled to draw leave salary equal to the amount admissible during half pay leave under the Tamil Nadu Leave Rules, 1933. Thus, all in-service candidates are entitled to this benefit.

35. Section III of the Tamil Nadu Leave Rules, 1933 deals with the leave salary. Rule 28 in Section III of the Tamil Nadu Leave Rules, 1933 dealing with the leave salary reads as under:-



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28. A Government servant in superior service—

(a) while on earned leave, or on unearned leave on medical certificate is entitled to leavesalary equal to his pay;

(b) while on leave on private affairs is entitled to leave-salary equal to half pay.

[G.O. Ms. No. 807, Finance (F.R.I.), dated 24th July 1976.]

(c) while on extraordinary leave, is not entitled to any leave.

Note 1.—In the case of a re-employed Government servant, leave salary equal to Full pay is admissible only upto the maximum period prescribed for non-permanent Government servant under rule 20.

Note 2.—Medical Officers and physicists in the Radiology Department shall draw during the period of their compulsory earned leave, their X-ray special pay for a period of not exceeding one month every year.

Note 3.—A Government servant governed by these rules who is granted study leave shall not be eligible for the benefit of the minimum leave-salary prescribed in Rule 90 of the Fundamental Rules. He will draw during such leave half-pay, subject to the limits prescribed in clause (b) of this rule.

Note 4.—“While on extraordinary leave for the treatment of Tuberculosis, Leprosy, Cancer or Hansen’s disease, a Government servant is entitled to an exgratia allowance equal to half his basic pay subject to a maximum of Rs. 250 (Rupees two hundred and fifty only) per mensem and a minimum of Rs. 125 (Rupees one hundred and twenty five only) per mensem”.

@(G.O. 539, dated 17th October 1989 w.e.f. 26-10-87.)

Note 5.—The Assistant Surgeons who are granted study leave for undergoing the Diploma in Radiology Course are eligible for the X-ray Special Pay of Rs. 50 per mensem for the period of study leave and also for the period of earned leave and unearned leave, where such



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leave at the credit of the Assistant Surgeons is combined with study leave.

Note 6.—In the case of a person to whom the Employee's State Insurance Act, 1948 (Central Act XXXIV of 1948) applies leave salary admissible during leave other than earned leave shall be reduced by the amount of benefit admissible under the said Act, for the corresponding period.

(G.O. Ms. No. 934, Finance, dated 26th August 1965.)

Note 7.—Omitted.

[G.O. Ms. No. 844, P. & A.R. (F.R.3.) Dept., dt. 2-9-1985, w.e.f. 23-11-1979.]

36. As per Note 3 to Rule 28 in Section III of the Tamil Nadu Leave Rules, 1933, a Government Servant who is governed by these Rules and who is granted "Study Leave" will draw during such leave half-pay, subject to the limits prescribed in Rule 28(b) in Section III of the Tamil Nadu Leave Rules, 1933.

37. Thus, the maximum salary which is payable under the Fundamental Rules read with Tamil Nadu Leave Rules, 1933 read with Tamil Nadu Study Leave Rules and the Rulings of the Government under Rule 84 of the Fundamental Rules has been capped. Even this, 50% of salary has been denied to the petitioners. Rule 84 of the Fundamental Rules indicates that the Government Servants who have been sanctioned Study Leave are entitled to 50% of the basic pay. Rule 90 of the Fundamental Rules reads as under:-

90. Subject to the condition that the leave salary of a Government servant shall in no case exceed his average pay, leave-salary is subject to the monthly minimum shown in the following table:-

The Table

	Half average in Asia Rs.	Quarter average in Asia Rs.
Government servants subject to ordinary leave rules.	250	125



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Note.—The minima specified above for Government servants apply only when leave is taken or extended out of India elsewhere than in Pakistan, Ceylon, Nepal or Burma.

RULINGS

Interpretation of the term "average pay" occurring in Rule 90 in respect of Group C and D Government Servants.

The words "average pay " used in Rule 90 should be interpreted in terms of Rule 9 (2) and not be taken as the pay which the non-gazetted Government servant would draw in the permanent post held substantively by him at the time of taking leave, if this pay be more than the average pay.

(G.I., F.D., No.124/R-1/30 dated 10th May, 1933)

38. The impugned G.O.Ms.46, Health and Family Welfare (B1) Department, dated 07.02.2020 deviates and has concluded that those who are undergoing Post Graduate Degree/Diploma and Super Speciality / Broad Speciality Course in Self Financing Private Medical Colleges either through the Single Window System of counseling conducted by the Selection Committee or through the All India Quota or through the Director of General of Health Services, New Delhi will not be sanctioned salary during the period of study.

39. The above reasoning in the impugned G.O. is contrary to the mandatory requirements of the above rules. There cannot be any discrimination between the in-service candidates who have secured a place in the Government Colleges/Institutions and those who have secured a place in Self Financing Private Medical Colleges either under the Management Quota or against the Quota surrendered to the State / Central Government. The Policy of the Government has to be uniform. On account of skewed interpretation of various rulings of the Courts, in-service candidates are undergoing their P.G. Courses in special discipline in Government Colleges / Institutions and in Self Financing Private Medical Colleges either under the Management Quota or against the Quota surrendered to the State / Central Government.

40. The decision to continue to grant full salary to in-service candidates while pursuing their course in Government Colleges / Institutions and to deny such salary to in-service candidates like petitioners who are undergoing Post Graduate Degree/Diploma and Super Speciality / Broad Speciality Course



in Self Financing Private Medical Colleges either through the Single Window System of counselling conducted by the Selection Committee or through the All India Quota or through the Director of General of Health Services, New Delhi is contrary to the Fundamental Rules, Tamil Nadu Study Leave Rules and Study Leave Rules in Annexure. It is discriminatory and amounting unfair treatment of similar persons.

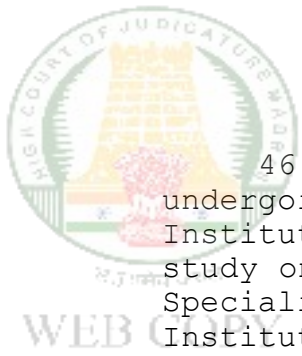
41. Guidelines of Medical Council of India in Notification No. MCI-23(1)/(MC)/2019-20/111925 merely enjoin that Doctors pursuing post graduation in Super Speciality / Broad Speciality Courses in the Private Colleges / Institutions are also paid stipend on par with their counterparts in Government Colleges / Institutions.

42. If the in-service candidates in the Government Colleges are given salary during the period when they are undergoing their post-graduation course, there is no reason as why the salary/stipend to the in-service candidates who are pursuing the same graduation in the Private Colleges / Institutions has been denied.

43. Further, the fact that in-service candidates like petitioners are forced to pay higher fee to the Private Colleges/Institutions for pursuing higher qualification itself shows that the persons like petitioners are at a disadvantage and are being discriminated and the economic resource of State is used for promoting the education of the candidates from the other States by permitting cross-subsidization of fees for them on account of All India Quota. Thus, there is a large scale discrimination by the respondents. Rigorous of such discrimination cannot be allowed to continue in the form of the impugned G.O.Ms.No.46, Health and Family Welfare (R1) Department, dated 07.02.2020.

44. The petitioners who are pursuing Post Graduate Degree / Diploma and Super Speciality / Broad Speciality Course in Self Financing Private Medical Colleges. Guidelines of Medical Council of India cannot be discriminated by the respondents which is "State".

45. The Guidelines of Medical Council of India in Notification No. MCI-23(1)/(MC)/2019-20/111925 do not absolve the Government of Tamil Nadu from paying a minimum salary that is required to be paid under the Fundamental Rules, Leave Rules and Study Rules to in-service candidates who are undergoing Post Graduate Degree / Diploma and Super Speciality / Broad Speciality Course in Self Financing Private Medical Colleges either through the Single Window System of counselling conducted by the Selection Committee or through the All India Quota or through the Director of General of Health Services, New Delhi. It there is relaxation in favour of one section of in-service candidates, it cannot be denied



46. Therefore, these in-service candidates who are undergoing P.G. Courses in Self Financing Private Colleges / Institutions are to be paid salary during the period of their study on par with those who are pursuing their Degree in Super Speciality / Broad Speciality Course in Government Colleges / Institutions. The petitioners cannot be discriminated and are therefore entitled to full salary.

47. At best, the Government can ascertain the details of stipend paid by Self Financing Private Colleges / Institutions and reduce the amount from salary to be paid to these candidates subject to the provision of the Fundamental Rules. Otherwise, the Government cannot discriminate between the candidates merely such candidates are pursuing such P.G. Course in Private Colleges / Institutions through Single Window System. To allow the impugned Government Order to continue is to legitimize discrimination between the in-service candidates undergoing higher education in Government Colleges / Institutions and in Self Financing Private Colleges / Institutions. Therefore, it is impermissible. Impugned Government Order is liable to be declared discriminatory and arbitrary.

48. Under these circumstance, the impugned G.O. is liable to be declared arbitrary, discriminatory and ultravires the Constitution of India and relaxation in the Fundamental Rules. These writ petitions therefore deserve to be allowed with consequential relief to the petitioners.

49. The respondents are therefore directed to pay arrears of salary and other attendant benefits to the petitioner on par with those in-service candidates who are pursuing similar course at subsidized in Government Colleges/Institutions. This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order.

50. Accordingly, these Writ Petitions are allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen



To

1. The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Secretary,
Finance Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
3. The Deputy Director of Health Services,
Tiruvallur Health Unit District,
Tiruvallur District.
4. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
5. The Director of Medical and Rural Health Services,
DMS Compound, Anna Salai,
Chennai - 600 006.
6. The Director of Public Health and Preventive Medicine,
DMS Compound, Anna Salai,
Chennai - 600 006.

+1cc to Mr.S.Mahendran, Advocate SR. No.2679
+1cc to Mr.G.Sankaran, Advocate SR. No.3183
+1cc to Mr.S.Udayakumar, Advocate SR. No.2413

W.P.Nos.17041 & 22490 of 2021 and
W.P.No.19391 of 2020 and
W.M.P.Nos.18071 & 18072 of 2021
and W.M.P.No.23984 of 2020

PL (CO)
PR (17/02/2022)