



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.18592 of 2019

and WMP (MD) Nos.14972 & 14973 of 2019

WEB COPY

Dr.S.Chandrasekaran

... Petitioner

Vs.

1.The Principal Secretary to Government
Labour and Employment Department
7th Floor, Fort St. George
Chennai 600 009.

2.The Director of Medical and Rural Health Services (ESI)
DMS Campus
Theynampet,
Chennai 600 006.

3.The Medical Superintendent
ESI Hospital
Sivakasi
Virudhunagar District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by 3rd respondent in Na.Ka.No.387/Ni/2019 dated 30.07.2019 quash the same and consequently direct the respondents to release and pay the non practicing allowances and special pay due to Assistant Medical Officer, ESI Hospital, Sivakasi for the month of July 2019 and to act in accordance with the Government orders issued from time to time by labour and employment department by considering the petitioner's representation dated 08.08.2019.

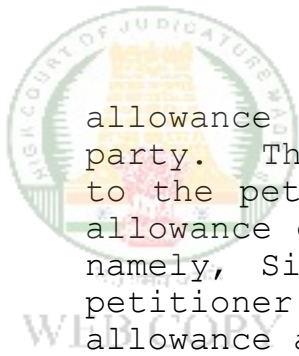
For Petitioner : Ms.W.Pamelin

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

The writ on hand has been instituted to cancel the order dated 30.07.2019 passed by the third respondent medical superintendent.

2. The order impugned states that the petitioner, who is working as Siddha Doctor is not eligible for non practising
<https://hcservices.ecourts.gov.in/hcservices/>



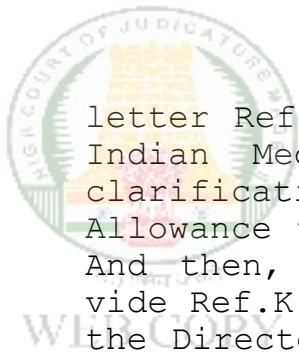
allowance and in this regard, an objection was raised by the Audit party. The said order declining to grant non practising allowance to the petitioner is questioned mainly on the ground that the said allowance granted to the other Siddha Doctors from other Districts, namely, Sivakasi, Trichy, Salem, Vellor and Hosur. Therefore, the petitioner alone is discriminated in the matter of non practising allowance and thus, the order impugned is to be set aside.

3. The Medical Superintendent/third respondent has erroneously issued the order without even verifying the fact that the non practising allowance is paid to the other Siddha Doctors working in various other Districts.

4. The learned counsel for the petitioner drew the attention of this Court with reference to the order passed in G.O.Ms.No.63 Labour and Employment Department dated 29.01.2019 regarding the announcement of opening of Ayurvedha Units in Employees State Insurance Hospital at Sivakasi, Trichy, Salem, Vellor and Hosur. In the said Government order also, the other allowances were permitted. The other allowance includes the non practising allowance. Thus, the order impugned is perverse.

5. The learned Additional Government Pleader objected the contention raised on behalf of the petitioner by stating that the said Government order issued in G.O.Ms.No.63 relates to five areas and the mistakes committed in some other Districts were noticed and audit objections were raised and in view of the inconsistency in grant of non practising allowance to the Siddha Doctors across the State of Tamil Nadu, clarification was sought for by the Commissioner of Indian Medicine and Allopathy and the Secretary to Government, Health and Family Welfare Department in letter dated 04.07.2014 clarified that as per the cabinet decision, the pay of Siddha Doctors and other staff of the Indian Medicine were enhanced on par with the Allopathy counterpart and not all the allowance, which they are entitled. Hence, request made therein deferred for better time. The clarification reveals that the cabinet decision was taken for enhancement of salary to the Siddha Doctors on par with Allopathy counterpart. However, the benefit of all other allowance granted to the allopathy Doctors are not granted to the Siddha Doctors. Therefore, the special allowance, ie., non practising allowance cannot be granted to Siddha Doctors. Based on the said clarification issued by the Government, the third respondent issued the order stopping the non practising allowance granted to the said Doctors. If at all the said allowance is being paid to the other Siddha Doctors in various other aspects, it is for the respondents 1 and 2 to initiate all appropriate action to maintain consistency in the matter of grant of non practising allowance to the Doctors in Siddha Branch and Allopathy Branch.

6. The counter filed by the third respondent also reveals that, <https://hdservices.ecourts.gov.in/csr/ces/> Medical and Rural Health Services, (ESI), Chennai



letter Ref. No.0540/ESI/E1/1/2014 dated 14.08.2014 has been sent to Indian Medicine and Homeopathy department and state that the clarification has been requested for claiming of Non Practicing Allowance to Siddha doctors and other staff of the Indian Medicine. And then, the Indian Medicine and Homeopathy Department, Chennai vide Ref.K.Dis No.01719/A2/13 dated 19.09.2014 has been addressed to the Director of Medical and Rural Health Services (ESI) Chennai and stated that in the government letter no.30904/TM-2(1)/2013-3 Health and Family Welfare Department dated 04.07.2014 cited the government have ordered that only the pay of the Siddha Doctors and other staff of the Indian Medicine were enhanced on par with allopathy counterparts and not all the allowance which they are entitled. After this government order, no revised order has been issued by the government till date. Hence, it was known that the claiming of non practising allowance and special pay for the Siddha Doctors and other staff of the Indian Medicine working under control of the Director of Medical and Rural Health Services (ESI), Chennai, were not eligible. So the prior intimation for non claiming of Non practising allowance and special pay from July 2019 to Siddha Doctors and other staff of the Indian Medicine has been issued to the Siddhar doctor and Ayurvedha Doctor working at ESI Hospital, Sivakasi by the Medical Superintendent ESI Hospital, Sivakasi vide Ref.No.387/E/2019 dated 30.07.2019.

7. It is further clarified that the other allowance would not include the non practising allowance. Therefore, the contention of the petitioner cannot be accepted.

8. This Court is of the considered opinion that the grant of allowance is a concession granted by the Government allowing pay. No doubt consistency is to be maintained as far as the Siddha Doctors are concerned. Once the Government clarified that non practising allowance already granted to the allopathy doctors cannot be granted to the Siddha Doctors, the same is to be followed uniformly to the Siddha Doctors across the State of Tamil Nadu. If at all any discrepancy in this regard, the same is to be rectified. As far as the case of the petitioner is concerned, the non practising allowance, which is a concession, cannot be claimed as a matter of right. Such concessions are granted taking note of certain factors as far as the Allopathy Doctors are concerned, the Government has taken a decision to grant non practising allowance and it is clarified by the Government such allowance is not applicable to the Siddha Doctors. The grant of concession is a policy decision of the Government and the scope of judicial review for inclusion in fixation of pay and grant of allowance are undoubtedly limited and high Court cannot substitute the allowance or grant the same, when it is clarified by the Government that such non practising allowance is not applicable to the Siddha Doctors.

9. Further more, there was an audit objection in this regard and based on that the third respondent issued an order. However, the order has been effected prospectively, without effecting any



recovery in respect of non practising allowance already received by the petitioner. This being the factum, this Court do not find any infirmity or perversity as such in respect of order impugned and accordingly, the writ petition stands dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Secretary to Government
Labour and Employment Department
7th Floor, Fort St. George, Chennai 600 009.
- 2.The Director of Medical and Rural Health Services (ESI)
DMS Campus, Theynampet,
Chennai 600 006.
- 3.The Medical Superintendent
ESI Hospital
Sivakasi, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-13484[F] dated 22/03/2022)

W.P. (MD)No.18592 of 2019
21.03.2022

MGJ(05.04.2022) 4P 5C