



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P(MD) .Nos.19806 to 19808 and 19810 of 2019

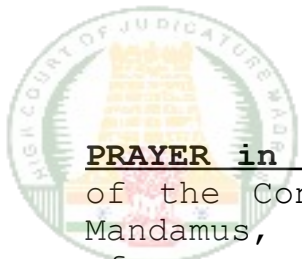
and

W.M.P(MD)Nos.16292 to 16295, 16289, 16290, 16299 and 16300 of 2019

1.Dr.S.Karthik	... Petitioner in W.P(MD)No.19806/19
2.S.Muthukumar	... Petitioner in W.P(MD)No.19807/19
3.R.Anusha	... Petitioner in W.P(MD)No.19808/19
4.Dr.E.Kalaiselvi	... Petitioner in W.P(MD)No.19810/19

Vs.

- 1.The Principal Secretary to Government,
Labour and Employment Department,
Secretariat,
Chennai-9.
- 2.The Director of Medical and Rural
Health Services (ESIS)
Thenampet, Chennai-6.
- 3.The Regional Administrative Medical Officer,
Office of the Regional Administrative Medical Officer,
E.S.I Campus, K.K.Nagar,
Madurai-20. .. Respondents in all W.Ps
- 4.The Incharge Medical Officer,
E.S.I Dispensary Nagal Nagar,
Dindigul. .. Respondents 1to3 in W.P.(MD)No.19806/19
- 5.The Incharge Medical Officer,
E.S.I Dispensary, Rajapalayam,
Virudhunagar District. ..4th Respondents in W.P.(MD)No.19807/19
- 6.The Incharge Medical Officer,
E.S.I Dispensary, Kovilpatty,
Tuticorin District. ..4th Respondent in W.P(MD)No.19808/19
- 7.The Incharge Medical Officer,
E.S.I Dispensary, Thirunagar,
Madurai. ...4th Respondent in W.P(MD)No.19810/19



PRAYER in W.P(MD)No.19806 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of recovery passed by the 3rd respondent in Na.Ka.No.8124/T1/2019 dated 26.08.2019 and the consequential order passed by the 4th respondent in Na.Ka.No.912/Voo/2019 dated 04.09.2019 and quash the same and consequently, direct the third and fourth respondents to continue to pay the non-practicing allowance.

PRAYER in W.P(MD)No.19807 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of recovery passed by the 3rd respondent in Na.Ka.No.8124/T1/2019 dated 26.08.2019 and the consequential order passed by the 4th respondent in Na.Ka.No.486/Ne 1/19 dated 30.08.2019 and quash the same and consequently, direct the third and fourth respondents to continue to pay the non-practicing allowance.

PRAYER in W.P(MD)No.19808 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of recovery passed by the 3rd respondent in Na.Ka.No.8124/T1/2019 dated 26.08.2019 and the consequential order passed by the 4th respondent in Na.Ka.No.854/Ne 1/Tho A E/2019 dated 07.09.2019 and quash the same and consequently, direct the third and fourth respondents to continue to pay the non-practicing allowance.

PRAYER in W.P(MD)No.19810 of 2019: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order of recovery passed by the 3rd respondent in Na.Ka.No.8124/T1/2019 dated 26.08.2019 and quash the same and consequently, direct the third and fourth respondents to continue to pay the non-practicing allowance.

For Petitioners
in all W.Ps : Mr.S.Govindan

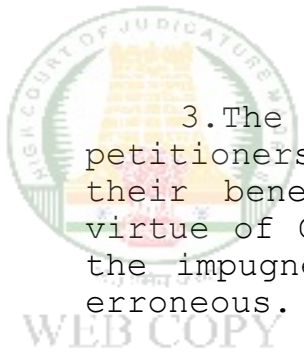
For Respondents : Mr.D.S.Nedunchezian,
in all W.Ps Government Advocate

COMMON ORDER

The petitioners are working as Assistant Medical Officers in Siddha E.S.I Dispensary.

2.The grievance of the petitioners is that "Non-practicing Allowance" of Rs.1,200/- per month granted to the writ petitioners is sought to be recovered without any show cause notice to the petitioners and is in violation of the Government Orders in this regard.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The learned counsel for the petitioners reiterated that the petitioners are eligible for non-practicing allowance, so long as their benefit of E.S.I Disciplinary. Such a benefit granted by virtue of G.O, cannot be taken away and the respondents have issued the impugned order merely based on the audit objections, which is erroneous.

4.The learned Government Advocate appearing for the respondents objected the said contentions by stating that the petitioners are not entitled/eligible for non-practicing allowance, as the Government hasd issued certain clarifications and in respect of the E.S.I Dispensary, it was constituted in particular places. Therefore, based on the terms and conditions of the policy decision of the Government, the audit party raised an objection and based on such audit objection, the impugned order of recovery has been passed.

5.However, the learned Government Advocate appearing for the respondents is unable to establish that the show cause notice was issued to the petitioners to defend their case. Thus, the impugned order is in violation of the principles of natural justice.

6.In view of the facts and circumstances, the impugned order passed by the third respondent in proceedings No. Na.Ka.No.8124/T1/2019 dated 26.08.2019 and the consequential order passed by the fourth respondent in proceedings No. Na.Ka.No.912/Voo/2019 dated 04.09.2019, Na.Ka.No.486/Ne 1/19 dated 30.08.2019 and Na.Ka.No.854/Ne 1/Tho A E/2019 dated 07.09.2019, are quashed and the matter is remanded back to the respondents for fresh consideration.

7.Accordingly, the respondents are directed to issue show cause notice to the petitioners within a period of four weeks from the date of receipt of a copy of this order. On receipt of such show cause notice, the petitioners are directed to submit their reply/objections along with the documents if any, within a period of two weeks from the date of receipt of the show cause notice. Thereafter, the respondents shall consider the reply/objections if any submitted by the petitioners and pass a speaking order assigning reasons, within a period of eight weeks therefrom.

8.With these observations, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)



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To

1.The Principal Secretary to Government,
Labour and Employment Department,
Secretariat,
Chennai-9.

2.The Director of Medical and Rural
Health Services (ESIS)
Thenampet, Chennai-6.

3.The Regional Administrative Medical Officer,
Office of the Regional Administrative Medical Officer,
E.S.I Campus, K.K.Nagar,
Madurai-20.

4.The Incharge Medical Officer,
E.S.I Dispensary Nagal Nagar,
Dindigul.

5.The Incharge Medical Officer,
E.S.I Dispensary, Rajapalayam,
Virudhunagar District..

6.The Incharge Medical Officer,
E.S.I Dispensary, Kovilpatty,
Tuticorin District.

7.The Incharge Medical Officer,
E.S.I Dispensary, Thirunagar,
Madurai.

+1 CC to M/s.SPL GP (SR-6193[F] dated 15/02/2022)

ORDER MADE IN
W.P (MD) .Nos.19806 to 19808 and
19810 of 2019
and
W.M.P (MD) Nos.16292 to 16295,
16289, 16290,
16299 and 16300 of 2019
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PKP/22.03.2022/4P/9C