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WP.No.26328 of 2024

In the High Court of Judicature at Madras

**Reserved on :
13.9.2024**

**Delivered on
20.9.2024**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.26328 of 2024
& WMP.No.28778 of 2024

Dr.S.Mugesh

Vs

...Petitioner

- 1.The State of Tamil Nadu, rep.
by its Principal Secretary,
Health & Family Welfare
Department, Secretariat,
Chennai-9.
- 2.The Special Secretary, Finance
Department, Fort St.George,
Secretariat, Chennai-9.
- 3.Directorates of Medical Education,
rep.by the Director of Medical
Education, Kilpauk, Chennai-10.
- 4.Directorates of Public Health &
Preventive Medicine, rep.by the
Director of Public Health &
Preventive Medicine,
No.359, Anna Salai, Chennai-6.
- 5.Government Nagapattinam
Medical College & Hospital,
rep.by its Dean,
Nagapattinam-611108.



WP.No.26328 of 2024

6.The Administrative Officer,
Government Nagapattinam
Medical College & Hospital,
Nagapattinam-611108.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Letter in Na.Ka.No.4687/K7/2024 dated 13.8.2024 given by the 6th respondent, quash the same and consequently direct the respondents to sanction and release the special allowances as applicable to the petitioner from the date of joining including arrears in terms of G.O.(Ms) No.293 Health and Family Welfare Department dated 18.06.2021 within the stipulated time period.

For Petitioner : Mr.M.Vijaya Raghavan
For R1 & 3 to 6 : Mrs.M.Sneha, Special Counsel

ORDER

This writ petition has been filed challenging the communication issued by the sixth respondent dated 13.8.2024 and for a consequential direction to the respondents to sanction and release the special allowance as applicable to the petitioner from the date of joining in terms of G.O.Ms.No.293 dated 18.6.2021.



WP.No.26328 of 2024

2. The case of the petitioner is as follows :

(i) In the year 2020, he joined post graduate course in M.D. Anaesthesiology in non service category at Stanley Medical College. At the time of admission to the said course, the petitioner executed a bond for a sum of Rs.40 lakhs undertaking that he would serve the State for a period of two years after completion of his post graduate course.

(ii) The petitioner completed the course in the year 2023 and he was appointed by the fourth respondent through proceedings dated 11.10.2023 temporarily as Assistant Surgeon under Category II of Class I of the Tamil Nadu Medical Service for a minimum period of one year and seven months from the date of joining. Now, he has been serving at the Government Medical College & Hospital, Nagapattinam namely the fifth respondent from 26.10.2023.

(iii) The grievance of the petitioner is that G.O.Ms.No.293 dated 18.6.2021 provides for grant of special allowances to medical officers in the Tamil Nadu Medical Service. The Government provides an allowance of a sum of Rs.9,000/- per month for post graduate degree holders in scarce specialities and another sum of Rs.5,500/- for the post graduate degree holders in non scarce specialities. The petitioner gave representations to the fifth respondent to sanction a sum of Rs.9,000/- per month to him as per the said Government



WP.No.26328 of 2024

Order.

(iv) As the representations given to the fifth respondent did not evoke any response, the petitioner sent two complaints dated 19.7.2024 and 23.7.2024 to the Chief Minister's Helpline and they were, in turn, forwarded to the sixth respondent. However, by the impugned communication dated 13.8.2024, the sixth respondent refused to sanction the special allowance to the petitioner on the ground that the petitioner is a non service post graduate and that the relevant Government Order would not apply to the petitioner. Aggrieved by that, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Special Counsel appearing for respondents 1 and 3 to 6.

4. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned communication dated 13.8.2024.

5. The only issue that arises for consideration in this writ petition is as to whether the petitioner is entitled to the special allowances as per the said Government Order.



WP.No.26328 of 2024

WEB COPY

6. A careful reading of the said Government Order would point out the fact that it is applicable only to those doctors, who are in service. In fact, the request came from the doctors' association, which consists of only in-service doctors. On considering their request, the Government appointed a committee and at a later point of time, accepted the recommendations of the committee so appointed.

7. Paragraph No.4 of the said Government Order dated 18.6.2021 is extracted as hereunder :

"4. The Government have examined the request of the doctors association along with the report of the Committee headed by the Special Secretary (PK), Finance Department. After examination, the Government have decided to accept the report of the Committee and accordingly ordered as follows :

(i) To grant two special increments to the Medical Officers on acquiring higher qualification as follows :

<i>Post Graduate Diplomas in all specialities</i>	<i>One Special Increment</i>
<i>Post Graduate Degree viz. M.D./M.S.</i>	<i>Two special Increments</i>
<i>Super Specialities viz. DM/MCh</i>	<i>Additional Two Special Increments</i>

These special increments shall count for pay fixation, dearness allowance and pension, etc.



WEB COPY



WP.No.26328 of 2024

(ii) An allowance of Rs.14,000/- per month is granted for all super specialities.

(iii) An allowances of Rs.9,000/- per month is granted for PG degree holders in the following scarce specialities :

S.No.	Scarce Speciality
1	Anaesthesia
2	Forensic Medicine
3	Obstetrics & Gynaecology
4	Paediatrics
5	Radio Diagnosis
6	Radiotherapy
7	Thoracic Medicine
8	General Medicine
9	General Surgery
10	Orthopaedics
11	Psychiatry

(iv) An allowance of Rs.5,500/- per month is granted for PG degree holders in other non scarce specialities.

(v) An allowance of Rs.5,000/- per month is granted for PG diploma holders in the following scarce specialities :

S.No.	Scarce Speciality
1	Anaesthesia
2	Forensic Medicine
3	Obstetrics & Gynaecology
4	Paediatrics
5	Radio Diagnosis
6	Radiotherapy
7	Thoracic Medicine
8	General Medicine
9	General Surgery



WEB COPY



WP.No.26328 of 2024

S.No.	Scarce Speciality
10	Orthopaedics
11	Psychiatry

(vi) An allowance of Rs.3,000/- per month is granted for PG diploma holders in other non scarce specialities.

(vii) An allowance of Rs.3,000/- per month to the Medical Officers (Medical Officers, Specialities and Super Specialities) working in Primary Health Centres/Hospitals in the difficult areas in hills, plains and remote areas as notified in G.O.(Ms) No.86 Health and Family Welfare (MCA-1) Department dated 06.3.2019.

(viii) An allowance of Rs.3,000/- per month to all Medical Officers working in the following functionally difficult assignments :

- i. Trauma/accident/emergency care unit
- ii. CEmONC Centres
- iii. SNCU (Sick new born care unit)
- iv. NBSU(New born stabilization unit).

The allowance for difficult areas and functionally difficult assignment shall be in addition to any other allowance they draw."

8. The learned counsel for the petitioner submitted that the said Government Order nowhere indicates that the special allowance is applicable only to in-service doctors. He also relied upon the earlier orders passed this Court.

9. The purport of the said Government Order can be understood



WP.No.26328 of 2024

only by reading the entire Government Order. Without any element of doubt, it is seen that the increments/allowances that have been given under the said Government Order apply only to the in-service doctors.



WP.No.26328 of 2024

10. In the case in hand, the petitioner is not an in-service doctor. He is fulfilling his obligation under the bond executed for a minimum period of one year and seven months from the date of joining. Rather, the petitioner is a non-service post graduate, who is temporarily appointed as the Assistant Surgeon under Category II of Class I of the Tamil Nadu Medical Service and is entitled only for usual allowances as per Rule 19(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for short, the Act). The appointment itself is purely temporary in nature and it has been given only for fulfilling the bond condition to serve in a Government institution. Therefore, by no stretch, the allowances that are given under G.O.Ms. No.293 dated 18.6.2021 can be extended to the petitioner.

11. In so far as the earlier orders that were relied upon by the learned counsel for the petitioner is concerned, this Court is of the considered view that none of those orders has dealt with the scope of G.O.Ms.No.293 dated 18.6.2021 with respect to non service post graduates.

12. In the common order passed in the case of **S.Sathish Kumar & Others Vs. State of Tamil Nadu & Others [W.P.(MD)]**



WP.No.26328 of 2024

Nos.8392 & 14397 of 2023 dated 28.6.2023], a learned Single Judge of the Madurai Bench of this Court dealt with a case where the concerned doctors were all in-service doctors working in various medical colleges and hospitals.

13. In the next common order that was relied upon in the case of **Dr.D.Hariharan & Others Vs. Union of India rep.by its Secretary to Government, Ministry of Health & Family Welfare, New Delhi-11 [W.P.Nos.25827, 25785 & 27568 of 2023 dated 16.11.2023]**, the First Bench of this Court dealt with the weightage marks to be awarded for the duty rendered during Covid-19. It must be borne in mind that all orders passed touching upon the benefits that were given during the pandemic period form a special class by itself. This Court and various High Courts in India had given a very liberal interpretation considering the yeoman service rendered by doctors during the pandemic period and those orders cannot be cited as precedents in a regular case. This Court held that the weightage marks will equally apply to the regular in-service doctors and to the non-service post graduates. Hence, this ratio cannot be applied to the facts of the present case.

14. In the order passed in the case of **Dr.R.Saravanan &**



WP.No.26328 of 2024

Others Vs. State of Tamil Nadu & others [W.P.No.5036 of 2024

dated 28.2.2024], another learned Single Judge of this Court also dealt with a case of regular in-service doctors, who were seeking for the grant of allowances under the relevant Government Order.

15. None of these orders will come to the aid of the petitioner, who is, admittedly, a non service post graduate and is presently fulfilling his obligation under the bond for a prescribed period.

16. The last desperate attempt that was made by the learned counsel for the petitioner was by relying upon the proceedings of the District Health Officer, Tirunelveli dated 07.8.2024. The learned counsel submitted that various doctors falling under the non service post graduates have been extended the benefit of payment of allowance under the relevant Government Order.

17. Per contra, the learned Special Counsel appearing for respondents 1 and 3 to 6 submitted on instructions that the documents that were relied upon by the petitioner were internal communications, which were not even made public nor implemented. Therefore, it was contended that no such allowance was granted to the non service post graduates, who are temporarily appointed to



WP.No.26328 of 2024

work for the bond period. She further submitted that such special allowances cannot be granted to the non service post graduates since the relevant Government Order only talks about the granting of special allowances to the in-service doctors.

18. The entitlement for allowances can be understood only by the language that has been used in the relevant Government Order, which makes it clear that the allowance is payable only to the in-service post graduates, who are engaged as doctors. The non service post graduates are merely fulfilling their obligation under the bond and they will not be entitled to any allowances apart from what is sanctioned under Section 19(1) of the Act.

19. In the light of the specific stand taken by the learned Special Counsel appearing for respondents 1 and 3 to 6, if any allowance has been granted to any doctor under the non service post graduate category, it shall be withdrawn forthwith.

20. In the light of the above discussions, this Court does not find any ground to interfere with the impugned communication dated 13.8.2024 issued by the sixth respondent. This Court holds that the petitioner is not entitled to the relief as sought for in this writ



WP.No.26328 of 2024

petition.

21. Accordingly, the above writ petition is dismissed. No costs.

Consequently, the above WMP is also dismissed.

20.9.2024

To

- 1.The State of Tamil Nadu, rep.
by its Principal Secretary,
Health & Family Welfare
Department, Secretariat,
Chennai-9.
- 2.The Special Secretary, Finance
Department, Fort St.George,
Chennai-9.
- 3.The Director of Medical Education,
Kilpauk, Chennai-10.
- 4.The Director of Public Health &
Preventive Medicine,
No.359, Anna Salai, Chennai-6.
- 5.The Dean, Government Nagapattinam
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Nagapattinam-611108.
- 6.The Administrative Officer, Government
Nagapattinam Medical College & Hospital,
Nagapattinam-611108.

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WP.No.26328 of 2024

N.ANAND VENKATESH,J

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WP.No.26328 of 2024&
WMP.No.28778 of 2024

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