

(2011) 11 MAD CK 0139

Madras High Court

Case No: Writ Petition No. 53 of 2011

V. Subramaniam

APPELLANT

Vs

The Director Local
Fund Audit Department
Kuralagam, Chennai -
600108, The Collector
Kancheepuram District
Kancheepuram and
The Commissioner
Achirapakkam
Panchayat Union
Kancheepuram District

RESPONDENT

Date of Decision: Nov. 12, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: S. Ramesh in all W.Ps, for the Appellant; I. Arokiasamy, Government Advocate for Respondents-1 and 2 in W.P. Nos. 53 to 55 of 2011 No Appearance for Respondent-3 in W.P. Nos. 53 to 55 of 2011, Mr. I. Arokiasamy, for Respondents-1 to 3 in W.P. No. 56 of 2011 Government Advocate and Mr. N. Senthil Kumar in W.P. No. 56 of 2011, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In view of the common issues raised in all the Writ Petitions, they have been taken up together and a common order is passed.

2. The petitioners in all these writ petitions were employed as Rural Medical Officers. They have been arrayed as part time Rural Medical Officers in the Municipalities and thereafter, time scale of pay was fixed for the petitioners. A batch of writ petitions have

been filed by the persons who were identically placed like that of the petitioners and the Honourable Division Bench of this Court in W.A.Nos.922 of 1995 etc., dated 01.02.1996 has directed the Government to treat the Rural Medical Officers working in the Panchayat Unions as regular employees, with regular time scale of pay. In compliance with the orders passed by the First Bench of this Court, orders have been passed by the Government in G.O.Ms. No. 16, Rural Development Department, dated 29.01.1998, by bringing the medical practitioners, working in various local bodies into regular time scale of pay.

3. Thereafter, another Government Order has been passed in G.O.Ms. No. 250, Rural Development Department, dated 14.09.2000, by which, it has been stated that the Panchayat Union Rural Medical Officers are not entitled for the pensionary benefits, as they are part time officers. By an elaborate order, in a batch of Writ Petitions filed in W.P. No. 30003 of 2004, etc., dated 19.04.2006, the Honourable Division Bench of this Court was pleased to hold that the Rural Medical Officers are holding the post on permanent basis and working on the prescribed hours on regular basis and therefore, they are not part time Officers. A specific finding has been given to the effect that treating the Medical Officers working in various local bodies as part time officers is not correct and contrary to the earlier directions of the Honourable Division Bench of this Court. Accordingly, the denial of pensionary benefits to the Rural Medical Officers, as per the Government Order passed in G.O.Ms. No. 250, Rural Development Department, dated 14.09.2000 was held to be arbitrary and irrational, contrary to the ratio laid down by the Honourable Division Bench of this Court on the earlier occasion. The decision of the Honourable Division Bench has been implemented by the Government by passing the standing order in G.O.Ms. No. 164, Rural Development and Panchayat Raj Department dated 24.09.2007.

4. Another Government Order was passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009 to the effect that the retired employees, who worked in non-provincialised service on a consolidated pay as well as the honorarium pay and daily wages are entitled to compute 50% of the service put in by them for the purpose of pension. The petitioners made a request to the respondents stating that in accordance with the Government Order passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009, the services rendered by them earlier to the regularisation will have to be taken into account. The said request was rejected by the orders impugned on the sole ground that the Government Order relied upon by the petitioners cannot be made applicable to them, as they were working as part time employees. Challenging the same, the present writ petitions have been filed.

5. In order to appreciate the issues involved, this Court will have to quote the judgment of the Honourable Division Bench in W.P. No. 30003 of 2004 extensively. Considering the challenge made to the Government Order passed in G.O.Ms. No. 250, Rural Development Department, dated 14.09.2000, the Honourable Division Bench of this Court has held as follows:

22. G.O.Ms. No. 250, dated 14.09.2000 proceeds on the basis that there are two types of dispensaries, namely regular dispensaries and part-time rural dispensaries in the control of the Panchayat Unions. The said G.O.Ms. No. 250 also proceeds on the basis that "the part time rural medical officers working in Panchayat Union were placed under the time scale of pay as per the orders of the Madras High Court from 01.10.1984" and it also starts on a query as to whether the rural medical dispensaries shall continue as part time dispensaries and whether vacancies should be filled up and whether the Rural Medical Officers are entitled for the other benefits that of other regular employees. Clause (a) of paragraph 3 of G.O.Ms. No. 250 proceeds on the basis that the functions of the rural dispensaries were not assessed so far and therefore, there was a need to assess the necessity of continuing the Panchayat Union dispensaries and their functions and till such assessment is made, pending Government decision, the Panchayat Unions were restrained from opening rural dispensaries. Clause (b) of paragraph 3 of G.O.Ms. No. 250 states that since primary health centres are available in all Panchayats in Tamil Nadu, the rural dispensaries shall function as part-time dispensaries. Clause (d) of paragraph 3 of G.O.Ms. No. 250 accepts that the post of Rural Medical Officers are occupied by graduates and certificate holders like B1, B2, C registered medical practitioners and of different qualifications. It however adds that they do the same work and they are all part-time Rural Medical Officers and the salary should be paid in terms of G.O.Ms. No. 16, Rural Development Department, dated 29.01.1998 and as per the orders of the High Court. Clause (e) of paragraph 3 of G.O.Ms. No. 250 denies pension benefits to the Rural Medical Officers on the ground that the post is a part-time post and therefore, the part-time Rural Medical Officers are not entitled to the pension benefits. Consequently, the other terminal benefits applicable for regular employees like selection grade, special grade, compassionate ground appointments, group insurance, provident fund, encashment of earned leave and surrender, are not made applicable to the part-time medical officers. Clause (g) of paragraph 3 of G.O.Ms. No. 250 deals with payment of stipend during the period in which they are undergoing post-graduation course. Clause (h) of paragraph 3 of G.O.Ms. No. 250 deals with denial of rural allowance and personal pay on the ground that the responsibilities of rural medical officers are less than that of the medical officers working in primary health centres and the Government Doctors.

23. In spite of clear and categorical finding by this Court that the rural medical officers are holding the post on permanent basis and working on the prescribed working hours on regular basis and not on part-time basis, the impugned G.O. proceeds on the basis that the post is part-time post. This is in spite of the fact that the order of the learned single Judge as well as the Division Bench of this Court have clearly held that the rural medical officers should be given the benefit of time scale of pay as they were working on regular basis. The Government has from time to time prescribed the working hours and granted the service benefits like special pay, special compensatory allowance, medical allowance, payment on surrender of earned leave, selection grade, medical leave, earned leave, etc. to the petitioner in W.P. No. 20316 of 2002, namely Dr.J.Krishnamoorthy, however the only claim which was denied to this petitioner is the pension and other terminal benefits

based on the impugned G.O.Ms. No. 250.

25. On a clear reading of the various orders of this Court and the proceedings of the Government cited and on going through the impugned G.O.Ms. No. 250, we have no hesitation to come to the conclusion that the impugned G.O.Ms. No. 250 at the best deals with the status of the rural medical dispensaries for the future. It also speaks about the vacancies to be filled up. However, a portion of the G.O.Ms. No. 250 deals with the service condition of rural medical officers who are already employed full-time and on a permanent basis. In this regard, Clause (e) of paragraph 3 of the G.O.Ms. No. 250 becomes relevant as it seeks to deny the pensionary benefit to the rural medical officers on the ground that the post of rural medical officer is a part-time post and therefore, they are not entitled to pension benefits. Though Clause (e) of paragraph 3 of the G.O. can be said to be prospective, it is in effect retrospective in nature. However, on a reading of Clause (f) of paragraph 3 of the G.O., it is seen that a reference is made to the time scale of pay paid to rural medical officers pursuant to the orders of the High Court. In respect of Clause (f), the employees are referred to as part-time medical officers. In the same manner, the opening paragraph of G.O.Ms. No. 250, dated 14.09.2000 also refers to the part-time rural medical officers and that their time scale of pay has been fixed pursuant to the orders of this Court. It is on the basis of this observation in the G.O.Ms. No. 250, the pensionary benefits were denied on the ground that the pensionary benefits are eligible only for permanent employees and not to part time employees.

26. The impugned G.O.Ms. No. 250 insofar as it refers to post of rural medical officer as part-time post and the rural medical officers as part-time rural medical officers, is clearly opposed to and contrary to the judgments of this Court in W.P. No. 863 of 1989, dated 08.03.1995 and the order of the First Bench of this Court in W.A. No. 922 of 1995 etc., dated 01.02.1996. It is also contrary to various Government Orders already issued fixing the time scale of pay insofar as the rural medical officers are concerned. Several correspondences between the Government and the authorities which we have referred to earlier, show that the rural medical officers are regular employees working on the prescribed working hours and therefore, it will be incorrect to state at the present, that they are part-time rural medical officers employed in the part-time post. The impugned G.O.Ms. No. 250 which refers to the medical officers as part-time medical officers employed in part-time post, is incorrect and has to be necessarily interfered with. The rural medical officers cater to the health needs of the people living in remote villages. In the earlier part of this order, we have referred to G.O. No. 2446, Education and Public Health Department (Public Health), dated 24.09.1937, where the Government has even allowed the Presidents of the Local Boards to fix the working hours of rural dispensaries. It is therefore apparent that the rural dispensaries have been functioning for more than six decades. However, surprisingly, it is for the first time in the year 2000 that the Government has woken up from its slumber to state that the functions of the Panchayat Unions dispensaries should be assessed. It only speaks about the lethargy on the part of the authorities concerned in having failed to address themselves to the needs of the rural

people and the working of the rural dispensaries.

28... It may be that the Government as a policy decision, has decided not to fill up the vacancies to the post of rural medical officers or maintain the dispensaries; but it cannot deny the benefits to the rural medical officers who are regularly working as rural medical officers on permanent basis and who have been granted the benefit of time scale of pay pursuant to the orders of the Court. The impugned G.O.Ms. No. 250 insofar as it impinges upon the rights of the petitioners to the benefits of pension and other terminal benefits, will have to be struck down as arbitrary and irrational.

40....The rural medical practitioners are to be treated as employees on regular service working in the rural dispensaries with effect from 01.10.1984 in terms of the order of the First Bench of this Court in W.A. No. 922 of 1995 etc., dated 01.02.1996, with all monetary and service benefits.

When the Honourable Division Bench of this Court has given a clear and specific finding on facts that the Rural Medical Practitioners are to be treated as employees on regular service working in the rural dispensaries, the earlier services rendered by them cannot be refused to be taken into account for the purpose of computing their pension, in accordance with the Government Order passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009. When the petitioners were directed to be treated on par with the other regular employees, they are entitled for all the benefits and they cannot be treated differently. The ratio laid down by the Honourable Division Bench of this Court on the earlier two occasions has become final as against the respondents and in fact, the same was accepted and implemented by the Court. Therefore, when the nature of work is the same and the petitioners were treated as regular employees with a specific finding that they have been doing the work of regular employees right from the very date of appointment, they cannot be differentiated on the sole ground that prior to the regularisation they were working in a part time capacity and therefore they are not entitled for the benefits as against the erstwhile daily rated employees who were subsequently regularised. Such a classification being an artificial classification, is impermissible under Article 14 of the Constitution of India.

6. When a party gets a right under a judgment, the said accrued right cannot be denied based upon an artificial classification. There is absolutely no basis for treating the petitioners differently than that of the other employees inspite of the ratio laid down by the Honourable Division Bench of this Court on the earlier occasions. When the petitioners have been given all other benefits treating them on par with the regular employees, for the purpose of computing the pension alone they cannot be treated differently, even after the judgment of the Honourable Division Bench of this Court, directing the Government to give them the benefits on par with the other employees. It is to be seen that the Government Orders gives the benefit to the erstwhile consolidated and daily rated employees who are not in a better position than the petitioners.

7. In other words, this Court on the earlier occasions found that such a classification cannot be sustained in the eye of law. The denial of computation of pension to the petitioners in accordance with the Government Order passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009 is nothing but an attempt to interfere with the orders passed by this Court. What has to be seen is the ratio laid down by the Court of law and on a mere technical ground the petitioners cannot be non-suited. The very object of the Government Order passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009 is to give benefits to the employees, who were working earlier on consolidated as well as daily rated wages. Therefore, the petitioners without any basis cannot be denied the said benefits as such a benefit will have to be extended to the petitioners as well.

8. In the light of the discussions made above, this Court is of the view that the orders impugned will have to be set aside and accordingly, they are set aside and consequently, the respondents are directed to calculate the revised pension and arrears of pension in accordance with the Government Order passed in G.O.Ms. No. 408, Finance (Pension) Department, dated 25.08.2009 to the petitioners, within a period of three months from the date of receipt of a copy of this order.

9. These writ petitions are ordered accordingly. No costs.