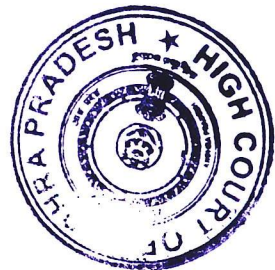


IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**TUESDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE MS JUSTICE B. S. BHANUMATHI



WP(AT) NO: 1868 OF 2021

Between:

Dr. Kambham Ishmail Jaya Raju, S/o.Late K.Samilen, aged about 60 years,(Retd) Medical Officer), R/o. Fl.No.3E, Krishna Veni Apartments, Opp. Multicare Hospital, Pedawaltair Junction, Visakhapatnam, Visakhapatnam District.

...PETITIONER

AND

1. Government of Andhra Pradesh, rep. by its Principal Secretary, Medical and Health Department, Secretariat, Velagapudi, Andhra Pradesh.
2. The Director, Insurance of Medical Services, Vijayawada, (Andhra Pradesh, Krishna District.
3. The Joint Director, Insurance of Medical Services, Vijayawada, Andhra Pradesh and Krishna District.
4. The Secretary, Health and family Welfare Labour Employment and Training and Factories (IMS) Dept. Government of A.P. Amaravathi, A.P. Guntur Dist.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to direct the respondents to implement the Circular Memo R.C.No.1577/E1/2017 dt.24/10/2017 issued by the 2nd respondent and follow the Circular Memo Rc.6454/E1/2017 dt.25.9.2017 issued by the 3rd respondent

IA NO: 1 OF 2025

Between:

1. The Director, Insurance of Medical Services, Vijayawada, (Andhra Pradesh, Krishna District.
2. The Joint Director, Insurance of Medical Services, Vijayawada, Andhra Pradesh and Krishna District.
3. The Secretary, Health and family Welfare Labour Employment and Training and Factories (IMS) Dept. Government of A.P. Amaravathi, A.P. Guntur Dist.

...PETITIONERS/RESPONDENTS

AND

1. Dr. Kambham Ishmail Jaya Raju, S/o.Late K.Samilen, aged about 60 years,(Retd) Medical Officer), R/o. Fl.No.3E, Krishna Veni Apartments, Opp: Multicare Hospital, Pedawaltair Junction, Visakhapatnam, Visakhapatnam District.
2. Government of Andhra Pradesh, rep. by its Principal Secretary, Medical and Health Department, Secretariat, Velagapudi, Andhra Pradesh.

(Respondent No.2 is formal party)

...RESPONDENT/PETITIONER

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders dated 23.07.2018 passed in O.A.No.1249 of 2018 and consequently direct the petitioner to refund the excess amount received by him as remuneration at ESI Hospital Visakhapatnam from December 2014 to May 2016, since the same is a violation of Para No.(6) of G.O.Ms.No.3 dated 12.01.2011 of the Finance (SMPC-II) Department.

Counsel for the Petitioner : SRI K. R. SRINIVAS

Counsel for the Respondent No.1: GP FOR SERVICES I

Counsel for the Respondent Nos.2 to 4: GP FOR SERVICES III

The Court made the following: ORDER



[3333]

The Honourable Ms. Justice B.S.Bhanumathi

The Court made the following:

THE HON'BLE MS JUSTICE B.S.BHANUMATHI**Writ Petition (AT) No.1868 of 2021**
(OA No.1249 of 2018)**ORDER:**

This petition was filed under Section 19 of the Administrative Tribunals Act, 1983, to direct the respondents to implement the Circular Memo R.C.No.1577/E1/2017 dated 24/10/2017 issued by the 2nd respondent and follow the Circular Memo Rc.6454/E1/2017 dated 25.9.2017 issued by the 3rd respondent.

2. The case of the petitioner briefly is as follows:

The petitioner was appointed as a medical officer in the year 2014 on contract basis under consolidated payment in ESI Hospital at Visakhapatnam. Thereafter, he was transferred to other ESI Hospitals in the district. On the appointment of the regular Civil Assistant Surgeon, the services of the petitioner were terminated on 15.06.2016. On the representation of the petitioner, he was appointed in ESI Dispensary, Gajuwaka, Visakhapatnam, district on 28.06.2016 with contract period up to 28.06.2018 or completing the age of 65 years. But, the petitioner resigned from his job in the month of October, 2017. From the date of appointment i.e., 28.06.2016, the petitioner was paid only basic pay of Rs.20,480/- till October, 2017. Thereafter, the petitioner submitted representations dated 1.10.2016 and 08.09.2017, through proper channel for considering his remuneration at higher rate. Subsequently, the 2nd respondent issued R.C.No.15503/E1C/2004 to implement P.R.C.No.2010 to the petitioner. On the application made by the petitioner, the Public Information Officer, furnished information that the contract medical

officer in ESI dispensary at Nellimarla, Vizianagaram was paid Rs.41,712/- per month.

3. When the matter came up for hearing on 22.11.2024, this Court observed that on 23.07.2018, the Andhra Pradesh Administrative Tribunal had passed an interim order in O.A.No.1249 of 2018, which is renumbered as W.P.(AT).No.1868 of 2021, with the following direction:

“Pending further orders, the respondents are directed to consider and release arrears of salary of the applicant for the period from 28.06.2016 to 31.08.2017 in pursuance of the Circular Memo in Rc.No.6451/E1/2017, dated 25.09.2017 issued by the 2nd respondent and consequential proceedings in Rc.No.1577/E1/201, dated 24.10.2017 issued by the 3rd respondent within a period of six weeks from the date of receipt of a copy of this order.”

4. Thereafter, on 04.02.2025, the respondents filed a petition in I.A.No.1 of 2025 to vacate the interim order dated 23.07.2018 along with the counter affidavit which reads briefly as follows:

- a. The petitioner was engaged by the 2nd respondent as contract medical officer at ESI Hospital, Visakhapatnam, from December 2014 to May 2016. During his tenure, the petitioner was paid a consolidated monthly amount of nearly Rs.41,275/- in violation of the existing government guidelines and the excess payment was made to the petitioner due to misinterpretation of the rules by the concerned officers during the tenure of the petitioner.

b. After the recruitment of regular Civil Assistant Surgeons, the petitioner's services were terminated at ESI, Visakhapatnam and re-engaged by the respondent No.2 as a Contract Medical Officer at ESI Dispensary, Gajuwaka, where the petitioner worked from 28.06.2016 to 31.08.2017 and was paid Rs.20,680/- per month. Further, from the details of payments shown to have been made to the other Contract Medical Officers at Nellimarla and at ESI Diagnostic Center, Vizianagaram, it was found that these officers were also paid excess amount due to misinterpretation of the rules by the concerned officers at that time in violation to the guidelines issued by the Government vide G.O.Ms.No.3, dated 12.01.2011 of the Finance (SMPC-II), Department. The petitioner submitted representation to make him payment on par with them.

5. Ms. Indrani, learned Assistant Government Pleader for Services-II, submitted that as per G.O.Ms.No.3, Finance (SMPC-II), Department, dated 12.01.2011, the remuneration of those contract/outsourced personnel shall be fixed not exceeding minimum of the time scale attached to the equivalent category of the relevant post and as per the revised scales of pay-2010, the scale of pay of the Civil Assistant Surgeon is Rs.20,680/- to Rs.46,960/- and therefore, the petitioner was rightly paid Rs.20,680/- per month. She further submitted that the contractual employee is not entitled to DA and HRA as like a regular employee, whereas the petitioner claims on par with a regular employee by placing reliance on those similarly placed Contractual Medical Officers who have wrongly drawn excess



amounts which includes DA+HRA and therefore, those cases cannot be the basis for claim of the petitioner.

6. Learned counsel for the petitioner submitted that as per the decision of this Court in **K.V.Ravi Sankar and Others Vs. The State of Andhra Pradesh and Others**, on 29.10.2024 in W.P.No.2351 of 2020, the petitioner is entitled to not only basic pay, but also to HRA and DA and referred to paragraph Nos.12 & 13 of the Judgment, which read as follows:

“12. This Court further observed that, similarly situated employees of the petitioners who are working in MA & UD Department filed O.A No.7335 of 2010 before the A.P. Administrative Tribunal and the same was allowed directing to release annual grade increments and HRA and against the said orders the Government preferred WP No.24130 of 2011 and batch before a Division Bench of this Court and the same was dismissed. Again, the Government challenging the said order, preferred an SLP No.29963 of 2011 before the Hon’ble Supreme court and the same was dismissed.

13. Having regard to the facts and circumstances of the case, this Court is of the opinion that the present writ petition is squarely covered by a Division Bench of this Court in WP No.24130 of 2011 and batch dated 13.8.2011, which was confirmed by the Apex Court in SLP (Civil) No.29963-29965 of 2011, dated 14.11.2011. Therefore, by following the same, this Court is inclined to allow the present writ petition, declaring the action of the respondents as illegal and arbitrary.”

7. Learned counsel for the petitioner also referred to the decision of the Supreme Court in **Bahadur Singh Vs. Jaspreet Kaur Talwar**, Contempt Petition (Civil) No.399 of 2020 in SLP (Civil) No.25389 of 2011 on 16.08.2022, wherein the expression "pay" was considered and the minimum pay was held to be basic pay+ grade pay and also dearness allowance, besides washing allowance relevant in that case not relevant to the case on hand and referred to paragraph No.4 of the decision, which reads as follows:

"4. Notably, the expression "pay" was considered by this Court in Contempt Petition (Civil) Nos.699-700 of 2015, **Tej Singh and Others v. Sarvesh Kaushal and Ors.**, arising out of decision dated 11.05.2015 in **Grah Rakshak, Home Guards Wel. Asso. v. State of H.P. & Others** and connected matters, Civil Appeal No.2759 of 2015 Etc. In its order dated 04.05.2016 passed in said Contempt Petitions, this Court observed:

"After hearing learned counsel for the parties, we are of the opinion that the expression "minimum of the pay" mentioned in paragraph 22 is intended to mean not only the basic pay + grade pay, but also the dearness allowance that comes along with the basic pay and grade pay. This is in the context of the view expressed by this Court denying regular appointments to the petitioners, while taking into consideration the fact that the services of the Home Guards are used during an emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel.

Accordingly, we make it clear that the word "minimum of the pay" used in paragraph 22 of the judgment and order dated

11th March, 2015 means the basic pay + grade pay + dearness allowances + washing allowance."

8. In view of the above legal proposition of law, the petitioner is entitled not only to the basic pay but also to DA and HRA as claimed by him.

9. Accordingly, the petition is allowed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

Sd/- N. NAGAMMA
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary, Medical and Health Department, Government of Andhra Pradesh, Secretariat, Velagapudi, Andhra Pradesh.
2. The Director, Insurance of Medical Services, Vijayawada, (Andhra Pradesh, Krishna District.
3. The Joint Director, Insurance of Medical Services, Vijayawada, Andhra Pradesh and Krishna District.
4. The Secretary, Health and family Welfare Labour Employment and Training and Factories (IMS) Dept. Government of A.P. Amaravathi, A.P. Guntur Dist.
5. One CC to Sri K. R. Srinivas, Advocate [OPUC]
6. Two CCs to GP for Services I, High Court of Andhra Pradesh. [OUT]
7. Two CCs to GP for Services III, High Court of Andhra Pradesh. [OUT]
8. Two CCs to GP for Medical & Health, High Court of Andhra Pradesh. [OUT]
9. Three C.D. Copies.

Cnr

HIGH COURT

DATED:11/03/2025

ORDER

WP(AT).No.1868 of 2021



**ALLOWING THE WP(AT)
WITHOUT COSTS**