

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. /2020. (GM-RES)

Between:

1. Dr. Suhas Murali

2. Dr. Karthik Adithya

....PETITIONERS

And

1. The State of Karnataka
through the Directorate of Medical Education,
Anand Rao Circle,
Bangalore -560 009.
Represented by Its' Director.
2. The Karnataka Examination Authority
18th Cross Sampige Road,
Malleshwaram,
Bengaluru- 560 012.
Represented by It's Chairperson.
3. The Medical Council of India
Pocket 14 Sector 8,
Dwarka Phase I,
New Delhi- 110 077.
Represented by It's registrar.
4. Karnataka Medical Council
6/6 Miller Tank Bund Road,
Vasanth Nagar,
Bangalore- 560 052.
Represented by it's Director.

5. Rajiv Gandhi University of Health Sciences
4th T Block, Jayanagar,
Bangalore- 560 041.
Represented by the Registrar.

6. Commissionerate of Health and Family Welfare Services
Government of Karnataka,
Anand Rao Circle,
Bengaluru- 560 009.
Represented by it's Commissioner.

7. Bangalore Medical College and Research Institute
K.R.Market,
Bangalore- 560 00
Represented by It's Director.

8. Bowring and Lady Curzon
Medical College and Research Institute
#1, Curzon Road, Shivajinagar,
Bangalore- 560 00
Represented by It's Director.

9. Department of Health and Family Welfare Services
Vikas Soudha,
Ambedkar Road, Bengaluru- 560 001.
Represented by it's Additional Chief Secretary.

.....RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA.

The Petitioner most humbly submits as follows:

1. The Petitioners have completed their Super Specialty (DM/MCh) in different subjects in the year 2019 from their respective institutions affiliated to the Fifth Respondent University. The Petitioners are graduates in Medicine (MBBS) and have also completed their post graduation (MD/MS) in different specialities and are registered as practitioners in their respective specialities with the Fourth Respondent, the Karnataka Medical Council. The Petitioners' Super Specialty qualifications and institution details are as mentioned in the table below:-

Rank of Petitioners	Super Specialty Subject	Name of Institution where they completed their Super Specialty
First Petitioner	Neurology (DM)	Bangalore Medical College and Research Institute, Bangalore.
Second Petitioner	Plastic Surgery (M Ch)	Bangalore Medical College and Research Institute, Bangalore.
Third Petitioner	Urology (M Ch)	Vijaynagar Insitute of Medical Sciences, Bellary.
Fourth Petitioner	Urology (M Ch)	Vijaynagar Insitute of Medical Sciences, Bellary.

Fifth Petitioner	Neurology (DM)	SS Institute of Medical Sciences, Davangere.
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Copies of the Provisional Degree Certificate of the Petitioners in respect of their Super Specialty Medical courses are produced herewith as **Annexure-A 1, A2, A3, A4 and A5.**

2. It is relevant to submit here that the State Government enacted the Karnataka Compulsory Service by Candidates Completed Medical Courses Act, 2012 (*hereinafter referred to as "the 2012 Act"*) and the Karnataka Compulsory Service Training by Candidates completed Medical Courses Rules, 2015 inter alia prescribing to the Graduate, Post Graduate and Super Specialty Graduate Medical students, a compulsory service of one year in Government Hospitals and health centres, after completion of their course. The said Act and Rules came to be challenged before this Hon'ble Court in W.P. No. 40566/2015 and other connected matters. The Hon'ble High Court of Karnataka vide the interim order dated 06/10/2015 was pleased to stay the operation of the said Act and rules and after detailed consideration has dismissed these Writ Petitions upholding the 2012 Act and the Rules, prospectively as applicable to students who finish the course after the 2012 Act's coming into force.

3. The Petitioners, after completion of their respective DM Super Specialty courses in the year 2019, sought for registration with the Fourth Respondent, in their respective super specialities, under the Karnataka Medical Registration Act. The Petitioners though had all the requisite documents for registration, and despite the fact that the operation of the 2012 Act was stayed during the relevant period of their admissions, were refused registration and were directed by the Fourth Respondent to obtain an NOC from the First Respondent in respect of “*compulsory one year service/rural service completion.*”(as per the 2012 Act)
4. The Petitioners No.1, 3, 4 and 5 were later called for counselling as per applicable rules, to be held on 11/09/2019 by the First Respondent and after counselling were issued the allotment letter dated 16/09/2019. Copy of the allotment letter issued by the First Respondent is produced herewith as **Annexure-B**. The Second Petitioner whose counselling was held subsequently, was issued an allotment letter dated 24/09/2019. Copy of the Second Petitioner’s allotment letter is produced herewith as **Annexure- C**. The Petitioners were shown to be allotted to the Seventh Respondent institution in their respective departments of specialty.
5. Following the allotment of posts by the First Respondent, the Petitioner Nos.1, 3, 4 and 5 and the Second petitioner were issued with appointment orders dated 19/09/2019 and

24/09/2019 respectively placing their services at the disposal of the Seventh Respondent as per the pay scale indicated in the said orders of appointment (i.e Rs.55,000/- per month). Copies of the appointment orders of the Petitioners dated 19/09/2019 and 24/09/2019 are produced herewith as **Annexure-D and E.**

6. The Petitioners No.1, 2 and 5 have since been working at the Seventh Respondent institution. The Petitioners No.3 and 4 whose services were initially placed at the disposal of the Seventh respondent, pursuant to the directions of the Seventh respondent, have reported to duty with the Eight respondent. Copy of the letter dated 21/09/2019 issued by the Eight Respondent to the Seventh Respondent in respect of the Third and Fourth Petitioners' services is produced herewith as **Annexure-F.**

7. The pay scale of the Petitioners, who have been appointed under Section 5 of the 2012 Act, has been unilaterally and arbitrarily fixed by the Seventh Respondent, without adherence to the provisions of the 2012 Act. The Petitioners who raised objections in this regard at the very time of their appointment were surprised to find that the pay scale of one *Dr. Vinayak B Naik*, who is also appointed as per the 2012 Act, to the Department of Anaesthesia with the Seventh Respondent institution, to the very same post as these Petitioners, vide the order of appointment dated 14/11/2019 is fixed at Rs.80,000/- (Rupees Eighty Thousand Only). Copy

of the appointment order issued to Dr. Vinayak B Naik is produced herewith as **Annexure-G**. The First and Fifth Petitioners brought this fact to the notice of the Seventh Respondent as early as December 2019 vide their letter dated 2nd December 2019 and sought for appropriate steps to be taken to fix their salaries in accordance with the 2012 Act. Copy of the letter dated 2nd December 2019 issued by the First and Fifth Petitioners to the Seventh Respondent is produced herewith as **Annexure H**.

8. The Petitioners intrigued by the disparity in the pay scales, applied under the Right to Information Act through their agent/counsel to the First Respondent, specifically requesting the First Respondent *“to provide the details in respect of the pay scale of persons appointed as Senior Specialists (DM Super Specialty) for the current financial year 2019-20”*. The First Respondent issued an evasive response dated 30/12/02019 replying that *“there is no provision for direct appointment to the post of Senior Specialist”*. Copy of the First Respondent’s reply is produced herewith as **Annexure-J**.

9. The Petitioners though are continuing to serve with the Seventh and Eight Respondent Institutions in compliance of the 2012 Act. Aggrieved by the unilateral and arbitrary fixation of their pay scale, they made representations to the First and Seventh Respondents highlighting the above facts and circumstances. The Fifth Petitioner made

representations dated 20/09/2019 and 24/09/2019 to the First and Seventh Respondents respectively highlighting the arbitrary fixation of pay and seeking for necessary actions to rectify the same. Copies of the letters dated 20/09/2019 and 24/09/2019 are produced herewith as **Annexure K and L**. The First to Fourth Petitioners have highlighted the above facts and made representations dated 30/01/2020 and 03/02/2020 to the Seventh and Ninth Respondents respectively. Copies of the Petitioners' representations are produced herewith as **Annexure M and N**.

10. It is relevant to note here that the Pay Scale for Senior Specialists in the Department of Health and Family Welfare Services, after revision w.e.f 1st July 2017 with the monetary benefits to be admissible from 1st April 2018, is fixed at "67550-1650-72500-1900-83900-2200-97100-2500-104600". The same is forthcoming from the Government Order No. FD 06 SRP 2018 dated 19th April 2018. A copy of the Government Order is produced herewith as **Annexure P**. In addition to the same the Dearness Allowance payable to the State Government employees as applicable to these Petitioners is also revised and w.e.f July 2019, the Dearness Allowance is fixed at **11.25% of Basic Pay**. Copy of the Government Order dated 19th October 2019 in No.FD 15 SRP 2019 is produced herewith as **Annexure Q**.
11. Despite the repeated representations, the First, Seventh and Ninth Respondents have failed to respond to the

Petitioners or to resolve their grievances. It is relevant to submit here that the said pay scale, as is fixed now, is also contrary to the provisions of the very same Act under which the Petitioners have been called for compulsory service. Aggrieved, the Petitioners are before this Hon'ble Court.

12. The Petitioners have not filed any other Petition before this Hon'ble Court or any other Court of forum on the same cause of action. The Petitioners have no other alternate or efficacious remedy but to approach this Hon'ble Court. Hence this Writ Petition.

GROUND

13. The Petitioners who have completed their DM Super Specialty course from the different institutions under the Fifth Respondent University, have been appointed by the State Government to give effect to the Karnataka Compulsory Service Training by Candidates completed Medical Courses Act, 2012. The 2012 Act provides for appointment of medical graduates who have completed their super specialty course/DM course as Senior Specialists for a period of one year under the compulsory service scheme. The State Government appointed the Petitioners as Assistant Professors with the Seventh Respondent institution for a one year period in the pay scale of Rs.55,000/- (Rupees Fifty Five Thousand Only) per month. **Section 5** of the said Act which

specifically covers those candidates who have completed Super Specialty courses stipulates that the candidate shall be paid such stipend as may be prescribed equal to hundred rupees less than minimum of gross salary of senior specialist of the Health and Family Welfare Department.

14. Section 5 of the 2012 Act, stipulates that every candidate undergoing compulsory service after completing Super Specialty Course, “shall be paid such a stipend as maybe prescribed equal to hundred rupees less then minimum of gross salary of specialist of Health and Family Welfare Department”. Under the Government order dated 19th April 2018, copy annexed as Annexure P, the pay scale applicable to Senior Specialist in the Health and Family Welfare Department is Rupees “67,550-1650-72500-1900-83900-2200-97100-2500-104600”. On the basic pay a per the above pay scale, in terms of Government Order dated 19th October 2019, Senior Specialist is paid dearness allowance at the rate of 11.25% of the basic pay with effect from 1st July 2019. Copy annexed as Annexure Q. This is due for further revision from 1st January 2020. In addition to the basic pay at minimum of Rs.67,550/- (Rupees Sixty Seven Thousand Five Hundred and Fifty) and dearness allowance thereon, Senior Specialist is also paid House Rent Allowance, City Compensatory Allowance, etc. The Petitioners are entitled to be paid all these amounts that are paid to a Senior Specialist with nominal deduction of Rupees One Hundred Only on the

gross salary, therefore the condition imposed in orders of appointment stipulating the stipend at Rupees Fifty Five Thousand only per month is not only discriminatory and arbitrary but also contrary to Section 5 of the Act. The nature of work and the duties of both regular employees with the State Government and those appointed under the compulsory service scheme are identical. The enactment is a reflection of the constitutional goal of “equal pay for equal work” which the legislation sought to achieve. Any government order or rule that the Respondents may rely upon in support of the stipend indicated in the appointment/allotment letter is void as being violative of Section 5 of the 2012 Act.

15. The Petitioners’ appointment/allotment letter indicates the stipend to be a amount of Rs.55,000/- pm (Rupees Fifty Five Thousand Only per month), whereas, as mentioned above, Dr. Vinayak B Naik who has been appointed to the department of Ananesthesia under the very same Act of 2012, in whose case also, Section 5 of the 2012 Act applies, has been appointed with a pay of Rs.80,000/- (Rupees Eighty Thousand Only) per month. The same is a clear case of discrimination against the Petitioners and is in violation of their Constitutional Rights guaranteed under Article 14.
16. The fixation of Petitioners’ salary at Rupees Fifty Five Thousand per month is arbitrary, in violation of their constitutional rights and is also against the provisions of the

Karnataka Compulsory Service by Candidates Completed Medical Courses Act, 2012.

GROUNDS FOR INTERIM PRAYER

17. The pay scale of one *Dr. Vinayak B Naik*, who is also appointed to the very same post as these Petitioners as per the 2012 Act, to the Department of Anaesthesia with the Seventh Respondent institution, vide the order of appointment dated 14/11/2019, is fixed at Rs.80,000/- (Rupees Eighty Thousand Only). The same is evident from **Annexure G** to this Writ Petition. The Petitioners' appointment/allotment letter indicates the stipend to be an amount of Rs.55,000/- pm (Rupees Fifty Five Thousand Only per month). Undeniably, at the very minimum, the Petitioners are entitled to the same salary/pay as the said Dr. Vinayak B Naik.

PRAYER

Wherefore it is most respectfully prayed that this Hon'ble Court be please to:

- i. Issue a Writ in the nature of mandamus directing the First Respondent to fix the Petitioners' pay scale in accordance with Section 5 of the Karnataka Compulsory Service by Candidates Completed Medical Courses Act, 2012.

- ii. Issue a Writ in the nature of mandamus directing the First Respondent to pay the arrears of salary to the Petitioners as per Section 5 Karnataka Compulsory Service by Candidates Completed Medical Courses Act, 2012, the from the date of their respective appointments.
- iii. Pass/Issue such other orders/Writ as deemed fit in the facts and circumstances of this case.

INTERIM PRAYER

Pending disposal of the above Writ petition this Hon'ble Court be pleased to direct the First Respondent to pay the Petitioners a salary of Rs.80,000/- (Rupees Eighty Thousand Only) per month to serve the interest of justice and equity.

Bangalore.

Advocate for Petitioners

Date:

Address for Service:

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