

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

CORAM

THE HON'BLE Mr. JUSTICE **M.M.SUNDRESH**

W.P.No.23931 of 2015
& **M.P.No.1 of 2015**

Ponneyin Chelvi A.S.

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Health Department, Fort St. George,
Chennai-600 009.
- 2.The Director of Medical Education,
EVR Periyar Salai, Kilpauk,
Chennai-600 010.
- 3.The Secretary,
Selection Committee for Post Graduate
Medical Studies,
EVR Periyar Salai, Kilpauk,
Chennai-600 010.
- 4.The Dean,
Madras Medical College,
Chennai-600 003.
- 5.The Dean,
Rajah Muthiah medical College,
Annamalai Nagar, Chidambaram,
Cuddalore District.

... Respondents

Prayer: Petition is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the fourth respondent herein to return the petitioner's original documents namely SSLC Mark Statement, Plus Two Mark Statement, Transfer Certificate, MBBS Mark Statement, Degree Certificate, Provisional Certificate, CRRI Certificate and Course-cum Conduct Certificate, OBC Certificate to the petitioner forthwith without insisting payment of Rs.5 Lakhs towards penalty.

For Petitioner .. S.Thirumavalavan

For Respondents .. Mrs.P.Rajalakshmi
Addl. Govt. Pleader for R1 to R4

Mr.R.Suresh Kumar for R5

ORDER

The facts are not in dispute. The petitioner is one of the candidate, who appeared for the 3rd phase of counselling for the seats, which according to the learned Additional Government Pleader, allotted to the State quota as surrendered from the All India quota. Accordingly, she joined the course of post graduate diploma in Clinical Pathology at Madras Medical College, Chennai on 30.06.2014. A final and last counselling was conducted on 07.07.2014 and 08.07.2014. The petitioner has participated in the said counselling.

2. The counter affidavits filed by respondents No.1 to 3 proceeds to state that the petitioner was informed about the consequences. The following undertaking was given by her as requested by the respondents.

"I am opting from dcp, mmc and (all india quota) joining Md Pathology in Annamalai University and I am ready to pay penalty of Rupees five lakhs surrendering the dcp seat taken under all india quota."

3. Based upon the said undertaking and also to avoid wastage of a post graduate seat in a non clinical speciality, she was permitted to take up MD.,(Pathology) Degree course at Annamalai University. This is the specific stand taken in the counter affidavit.

4. The petitioner thereafter sought for the original document from the Dean, Madras Medical College, Chennai, the fourth respondent herein. It was refused on the ground of undertaking given by her as stipulated under Clause 45 of the prospectus for the year 2014-2015. Thus, the present writ petition has been filed by the petitioner.

5. The learned counsel appearing for the petitioner submitted that the above undertaking does not bind the petitioner. There is no discontinuation of the course involved. Therefore, the writ petition will have to be allowed.

6. The learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that the petitioner was allotted a seat surrendered under the All India Quota through merit list of the State. Thus, the prospectus would govern the case. Having given an undertaking, the petitioner cannot be allowed to contend to the contra. The seat in post-graduate diploma in clinical pathology is not filled up. Therefore, the writ petition will have to be dismissed.

7. Admittedly, the petitioner was allowed to join M.D., (Pathology) Degree course at Annamalai University. It is not in dispute that the petitioner got admission from the surrendered seats based upon her standing in the merit list. She got the seat in post graduate diploma in Clinical Pathology earlier and subsequently, M.D., (Pathology) degree course. Thus, both the seats had been obtained with respect of the surrendered seats of All India quota filled up thereafter under the State quota. Clause 45 of the Prospectus,

though may have an application to the candidates, such as the petitioner, having been selected under the State quota, it thus apply to a case of discontinuation. There is no express prohibition for a candidate, who has already selected though for a diploma course from being considered for a post graduate degree course. Admittedly, the petitioner has been selected on merit. Therefore, Clause 45 of the Prospectus, as such, cannot have any application since no discontinuation is involved. It is the specific case of the respondents in the counter affidavit filed that the petitioner was allowed to take up M.D., Pathology Degree course at Annamalai University not only based upon undertaking given but also to avoid wastage of a post graduate seat in a non clinical speciality at Annamalai University. Thus, the object and rationale behind Clause 45 of the Prospectus has been achieved. To put it differently, had the petitioner not been allotted the M.D., Pathology Degree course at Annamalai University, the said seat would have gone waste. The petitioner having been given the seat based upon merit though different counselling, it cannot be found fault with. The undertaking given by her also cannot be put against her for the simple reason that there were no other degrees for M.D., (Pathology) degree course. A right coupled with the corresponding duty cannot be evaluated in terms of money.

8. For the aforesaid reasons, this Court is inclined to allow this writ petition and accordingly, the same is allowed with a direction to the fourth respondent to return the petitioner's original documents. In any case, there is no question of penalty involved as the petitioner did not discontinue the earlier course but opted for a better one and as such no penalty need be paid by the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

12.10.2015

Index:Yes/No

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M.M. SUNDRESH, J.

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