

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.04.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.11187 of 2015

and

M.P.No.1 of 2015

Dr.Major M.Kanagaraj

.. Petitioner

Versus

1. The Government of Tamil Nadu,
Rep by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Director of Public Health and
Prevention Medicines,
Chennai - 600 006.
3. The Secretary,
Medical Recruitment Board,
Chennai - 600 006.
4. The Deputy Director of Health Service,
Thiruvannamalai.
5. The Director General,
Office of the Director General,
Armed Forces Medical Services,
(DG-ID) Ministry of Defence,
M.Block,
New Delhi - 110 001.
6. The Commandant,
INHS Asvini,
Mumbai.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 4 to hand over all the original certificates of the petitioner retained by the 4th respondent so as to enable the petitioner to join P.G. Course of M.D. on the subject Anesthesiology at INHS, Asvini, Mumbai on 17.4.2015 at 9.00 a.m.

For Petitioner : M/s.Dr.R.Gouri

For Respondents : Mr.V.Subbiah
Special Government Pleader
for R1 to R4

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner would state that he has completed his M.B.B.S degree at K.A.P.Viswanatham Government Medical College, Trichy in the year 2009 and the decree certificate was issued by the Tamil Nadu Dr.MGR Medical University bearing Registration No.52035231, dated 10.11.2009.

3. It is further stated by the petitioner that he has served in Army Medical Corps for a period of five years on contractual basis as Short Service Commissioned Officer from 3.9.2009 to 3.9.2014 and during his service in army, he stationed at Punj in Jammu and Kashmir for a period of four years.

4. The petitioner, after his release from service, applied for admission to Post Graduate in Army Forces Medical Services (AFMC) under Army Ex-servicemen Quota (priority IV) and also undergone All India Entrance Examination for Post Graduate Course 2015 (AIPGMEE-2015) and was awaiting his results.

5. In the meantime, the petitioner was selected for the post of Assistant Surgeon (General) through the examination conducted by the Medical Recruitment Board and an appointment order dated 20.03.2015 was also issued to him and he was posted at Upgraded Primary Health Centre, Kavarapattu, Thiruvannamalai Health Unit District and he was directed to join the duty within a period of thirty days and further directed to submit all his originals. Accordingly, the petitioner reported for duty before the fourth respondent on 28.03.2015 and submitted all his originals.

6. The results of All India Entrance Examination for Post Graduate Course 2015 (AIPGMEE-2015) was announced and the petitioner was selected and the Office of the Director General, Armed Force

Medical Services (DG-1D), Ministry of Defence, New Delhi-110 001 vide communication dated 13.04.2015, directed the petitioner to report to the Dean Academics/Officer-in-charge Admissions/Post Graduation Cell at the allotted institution from 13.04.2015 to 17.04.2015, not later than 09.00 hrs, failing which the offer of admission will automatically stands cancelled, without further reference to him.

7. The petitioner, on getting his admission, has also submitted his letter of resignation to the third respondent and it is yet to be accepted.

8. The petitioner has filed this Writ Petition, praying for return of all the original certificates so as to enable him to join the Post Graduate Course of M.D. on the subject of Anesthesiology at INHS, Asvini, Mumbai.

9. The learned counsel appearing for the petitioner has invited the attention of this Court to the order dated 13.03.2015 made in W.P.No.7153 of 2015 and M.P.No.1 of 2015 and would submit that the petitioner is similarly placed and in the light of the fact that he has got admission in Post Graduate Course, he has to report before the Office of the Director General, Armed Forces Medical Services (DG-1D), New Delhi on or before 17.04.2015 not later than 0900 hours and the fourth respondent may be directed to hand over all the original certificates to the petitioner.

10. Mr.V.Subbiah, learned Special Government Pleader, has accepted notice for respondents 1 to 4 and would submit that since the petitioner has joined the services at Upgraded Primary Health Centre, Kavarapattu, Thiruvannamalai Health Unit District, the fourth respondent is in custody of all the documents and since the petitioner has also submitted his resignation, appropriate orders may be passed.

11. This Court has carefully considered the rival submissions. It is not in serious dispute that the petitioner, after passing out M.B.B.S. Degree, has served in Army Medical Corps for a period of five years as Short Service Commissioned Officer from 3.9.2009 to 3.9.2014 and he has also got admission under Army Ex-serviceman Quota

by passing All India Entrance Examination for Post Graduate Course 2015 (AIPGMEE-2015) and vide communication dated 13.04.2015, issued by the Office of the Director General, Armed Forces Medical Services (DG-1D), New Delhi-110 001, he was called upon to produce his original certificates/testimonials between 13.04.2015 and 17.04.2015 not later than 09.00 hrs. It is also to be noted that the petitioner has also tendered his resignation from the present post, which is yet to be accepted.

12. This Court, taking into consideration the above facts and circumstances, is of the view that the prayer sought for by the petitioner is to be granted.

13. This Court, in the order dated 13.03.2015 made in W.P.No.7153 of 2015 and M.P.No.1 of 2015 stated supra, has taken into consideration the orders passed in W.P.No.12923 of 2008 etc., batch and ordered return of the original documents. In the light of the said order, there cannot be any impediment and it is relevant to extract the order dated 12.12.2008 made in W.P.No.12923 of 2008 etc., batch, which has been relied on in W.P.No.7153 of 2015.

"27.Issue No.4: Insofar as the denial of permission to apply for super specialty course or higher studies by the petitioners before completion of the bond period, the petitioners are justified in contending that their right to pursue higher studies cannot be denied by the respondents merely because they have executed bonds. Right to pursue higher studies is to be treated as a human right and the same cannot be denied merely because the petitioners have executed a bond to serve for three years after completing their PG Degree/Diploma.

28.Thus, the respondents cannot deny the petitioners' right to apply for higher studies/super specialty courses under the guise of enforcing the bond conditions. The petitioners are entitled to appear for Entrance Examinations for super specialty course, which are conducted by the Government/any University/Deemed Universities and if they are selected, the respondents are bound to relieve the petitioners even if they are in temporary service as per the bond, after getting an Undertaking from the

petitioners that they should serve the remaining period of bond, if not, it is well open to the respondents to collect the bond amount as mentioned in the bond with proportionate interest. On any account no PG Degree/Diploma Holder can be prevented by the respondents to pursue their higher studies and improve their knowledge of specialisation. Thus the said issue is answered against the respondents on the above terms.

30. In fine, all the writ petitions are disposed of on the following terms:-

[1] The PG Degree/Diploma Holders, who applied for their Degree/Diploma course through All India Entrance Examination for selection to All India Quota seats and admitted to Tamil Nadu Government Medical Colleges are not bound by the terms and conditions issued by the respondents through their prospectus. Even if any candidate executed bond, it will have no effect since they have not applied for admission under the impugned prospectus.

[2] The candidates admitted in the State Quota under the Non-Service category are bound by the terms of the bond executed by them pursuant to the prospectus Clause 68[d] and on completion of their course, they are bound to serve in Government Colleges/Hospitals according to the availability of posts for three years, failing which it is open to the respondents to recover the sum of Rs.2/Rs.3 lakhs as the case may be, as per the bond conditions.

[3] No PG Degree/Diploma Holder shall be denied of their certificates in original on their completion of their course as the respondents have no jurisdiction to retain the certificates and the respondents are directed to return all the certificates of the petitioners within two weeks from the date of receipt of copy of this order.

[4] No PG Degree/Diploma Holder, who completed their course or joined in Government service temporarily as per the bond, shall be denied of opportunity of applying super specialty course and if they are selected, they should be permitted to undergo the course subject to the condition that remaining period of service shall be served in the Government Institutions by the concerned persons after the completion of their respective super

specialty course. If not it is open to the respondents to recover the bond amount with proportionate interest.

[5]There will be no order as to costs.

[6]Connected MPs are closed."

14. In the result, the Writ Petition is disposed of and the fourth respondent is directed to return the original certificates / testimonials collected from the petitioner at the time of joining the services as Assistant Surgeon (General) at Upgraded Primary Health Centre, Kavarapattu, Thiruvannamalai Health Unit District, forthwith. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(R)
Dt:16/4/2015

True Copy

Sub-Assistant Registrar

To

1. The Secretary
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Director of Public Health and
Prevention Medicines,
Chennai - 600 006.
3. The Secretary,
Medical Recruitment Board,
Chennai - 600 006.
4. The Deputy Director of Health Service,
Thiruvannamalai.
5. The Director General,
Office of the Director General,
Armed Forces Medical Services,
(DG-ID) Ministry of Defence,
M.Block,
New Delhi - 110 001.

6. The Commandant,
INHS Asvini,
Mumbai.

+ 1 cc to Mrs.R.Gowri, Advocate SR 20819

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