

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2015

Pronounced on : 16.10.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.Nos.28959 to 28961 of 2013,
8793 of 2014 and 9595 of 2014

and M.P.Nos.1 to 1 of 2013
in W.P.No.28959 to 28961 of 2013,

M.P.Nos.1 of 2014 in W.P.No.8793 of 2014

AND

M.P.No.1 of 2014 in W.P.No.9595 of 2014

W.P.Nos.28959-28961/2013

Dr.Karthikeyan T.T.Petitioner in W.P.No.28959/2013

Dr.Kirthika. M.Petitioner in W.P.No.28960/2013

Dr.Bhaskar. M.Petitioner in W.P.No.28961/2013

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai - 600 009.
2. The Director of Medical and Rural
Health Services,
Tamil Nadu, Chennai - 600 006.
3. The Principal,
Tamil Nadu Government Dental College,
Chennai - 600 002.

4. The Director of Medical Education,
Chennai - 600 010.

5. Dr.R.Bhavani **

..Respondents in W.P.
Nos.28959-28961/2013

** R5 impleaded as per order dated
02.03.2015 in MP No.1/2014 in
W.P.Nos.28959 to 28961/2013

W.P.No.8793/2014

Dr.D.Ajaypraveen

...Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2. The Director of Medical Services and
Rural Health Services,
7th Floor, DMS Building,
No.359, Anna Salai, Chennai - 6.

3. The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
No.359, Anna Salai, Chennai - 6.

...Respondents

W.P.N o.9595/2014

Dr.R.Bhavani

...Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai-9.

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2. The Director/Member Secretary
Medical Services Recruitment Board (MRB),
7th Floor, DMS Building,
No.359, Anna Salai, Teynampet,
Chennai - 6.
3. The Director,
Directorate of Medical & Rural Health Services,
DMS Building, 359, Anna Salai,
Teynampet, Chennai - 6.
4. Dr.Karthikeyan
5. Dr.Kirthika, M
6. Dr.Baskaran
7. Dr.Ajay Praveen ...Respondents

Prayer in W.P.No.28959 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the third respondent herein to forthwith return the original certificates submitted by the petitioner with transfer certificate to the petitioner with proper relief by break of study from our PG Course so as to enable the petitioner to join the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Services at GH, Manamadurai, Sivagangai District, pursuant to letter of the second respondent in Ref No.7169/E6/4/2013, dated 17.09.2013 subject to the condition that the petitioner would complete the course as per the prospectus within a period of six years with two breaks.

Prayer in W.P.No.28960 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the third respondent herein to forthwith return the original certificates submitted by the petitioner with transfer certificate to the petitioner with proper relief by break of study from our PG Course so as to enable the petitioner to join the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Services at GH, Gingee, Villupuram District, pursuant to letter of the second respondent in Ref No.7169/E6/4/2013, dated 17.09.2013 subject to the condition that the petitioner would complete the course as per the prospectus within a period of six years with two breaks.

Prayer in W.P.No.28961 of 2013 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the third respondent herein to forthwith return the original certificates submitted by the petitioner with transfer certificate to the petitioner with proper relief by break of study from our PG Course so as to enable the petitioner to join the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Services at GH, Valparai, Coimbatore District, pursuant to letter of the second respondent in Ref No.7169/E6/4/2013, dated 17.09.2013 subject to the condition that the petitioner would complete the course as per the prospectus within a period of six years with two breaks.

Prayer in W.P.No.8793 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the letter of the first respondent dated 18.03.2014 made in Letter NO.39080/B2/2013-2, quash the same and consequently direct the second respondent to issue appointment order to the petitioner herein pursuant to the selection for the post of Assistant Dental Surgeons (General) vide notification dated 12.09.2013 in No.7/MRB/E4/2013. ***

*** Prayer amended as per order of this Court dated 16.10.2015 in MP No.1/15 in WP No.8793/15

Prayer in W.P.No.9595 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent pertaining to the order vide Letter No.46152/B2/2013-2, dated 28.02.2014, and quash the same and consequently direct the respondents 1 to 3 herein to forthwith appoint the petitioner to the post of Assistant Surgeon (Dental) by cancelling the selection of the respondents 4 to 7 in view of Clause 10(ii) of the Notification No.01/2013, dated 31.03.2013 issued by the second respondent.

For Petitioners in W.P. : Mrs.Radha Gopalan
Nos.28959-285961/2013 for M/s.Radha Gopalan
and for Respondent
Nos.4 to 6 in W.P.
No.9595/2014

For Petitioner in W.P. : Mr.M.Baskaran
No.8793/2014 and R7
in W.P.No.9595/2014

For Petitioner in W.P. : Mr.G.Arulmurugan
No.9595/2014 and R5
in W.P.Nos.28959-
28961/2013

For Respondents 1 to 4 : Mr.P.H.Aravind Pandian,
in W.P.Nos.28959- Additional Advocate General
28961/2013 and RR 1 to assisted by Mr.S.Gunasekaran
3 in W.P.Nos.8793 and Government Advocate
9595/2014

COMMON ORDER

The question involved in all these writ petitions are one and the same and hence, all these writ petitions are disposed of by this common order.

2.0. The facts of the writ petitions in W.P.Nos.28959 to 28961 of 2013 are as follows :

2.1. The petitioners in all these three writ petitions appeared for All India Entrance Examination for selection to All India quota of seats in M.D.S. (Orthodontics) and they were successful in the examination and they were selected based on merits and they were admitted to the Tamil Nadu Government Dental College, Chennai, in the M.D.S. Course for the years 2011-2014.

2.2. While so, the Medical Services Recruitment Board (hereinafter referred to as "MRB) called for application for direct recruitment to the post of Assistant Surgeon (Dental) (General-BDS) in Tamil Nadu Medical Services vide Notification No.01/2013, dated 31.03.2013.

2.3. Pursuant to the said notification, the petitioners applied for the said post and appeared in the written examination held on 19.05.2013. They were successful and they were selected for the post by the MRB vide the Notification No.4/MRB/E4/2013, dated 12.06.2013 and they were called upon to produce original certificates for verification. Their original certificates were sent by the Principal, Tamil Nadu Government Dental College, Chennai, through a messenger for verification. Thereafter, they were finally selected vide the Notification No.7/MRB/E4/2013, dated 12.09.2013, for the post of Assistant

Dental Surgeon.

2.4. Based on the selection, the Director of Medical and Rural Health Services, Chennai, sent a letter directing the petitioners to appear for counselling for the place of posting on 17.09.2013. The petitioners participated in the counselling and exercised their option about the place of posting.

2.5. Accordingly, the Director of Medical and Rural Health Services, Chennai, issued a communication in Ref.No.7169/E6/4/2013, dated 17.09.2013 asking the petitioners to produce the original BDS Certificate, Community Certificate, Original Transfer Certificate with proper relief from the Dental College to collect the posting order within 30 days from the date of receipt of the said memo dated 17.09.2013. The said memo dated 17.09.2013 was received by the petitioners on 30.09.2013.

2.6. Immediately, the petitioners sent a representation dated 08.10.2013 to the Director of Medical and Rural Health Services and also marked copies to various authorities. In the said representation, they expressed their apprehension that since they executed bond to the Director of Medical Education stating that after completion of Post Graduate Degree, they would serve for a period of two years in the Government Medical Service, their original certificates would be kept with the Tamil Nadu Government Dental College and they could not get original certificates and relieving order unless, they pay a sum of Rs.14.72 lakhs as per the bond condition as discontinuation fees. Therefore, they requested the Director either to permit them to complete the course within the few remaining months left and then to join the service or in the alternative, to issue posting orders on temporary relief by break of study from P.G. Course with bonafide certificate and attested copies of original certificates. That is, they were willing for break of study from P.G. Course so as to get the posting order.

2.7. Further, they made a representations on 21.10.2013 to the Principal, Tamil Nadu Government Dental College, Chennai, seeking to relieve them from their study in P.G. Course for enabling them to take up the post as Assistant Surgeon (Dental) in Tamil Nadu Medical Services and provide them attested copies of original certificates. They also requested that if the Director of Medical and Rural Health Services insist the original certificates, provide them the original certificates, in the manner as it was done during the counselling, through a Special messenger. Their intention was to continue the P.G. Course at a later point of time. But they

expressed in uncertain terms about their willingness to leave the P.G. Course so as to get the posting order, if the Director of Medical and Rural Health Services was not willing to give time to join the post till completion of course. But neither the Director of Medical and Rural Health Services nor the Principal gave any reply to the aforesaid representations dated 08.10.2013 and 21.10.2013 respectively.

2.8. Hence, the petitioners approached this Court by filing these writ petitions seeking a direction to return the original certificates with original Transfer Certificate with proper relief by break of study from P.G. Course so as to join the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Services at the respective places of posting as per the order dated 17.09.2013 issued by the Director of Medical and Rural Health Services. They also requested that they would complete the course as per the prospectus within a period of six years with two breaks.

2.9. When these writ petitions came up for hearing on 29.10.2013, this Court granted an interim order, extending the time limit given in the order dated 17.09.2013, to join duty, until further orders. The same is still in force.

W.P.8793 of 2014 :

3.0. The petitioner in W.P.No.8793 of 2014, after passing Bachelor of Dental Surgery (shortly B.D.S.), was pursuing his higher studies in M.D.S., final year (III year) in the Department of Conservative Dentistry and Endodontics at the College of Dental Sciences, Devangare, Karnataka State.

3.1. When the MRB invited applications for appointment to the post of Assistant Surgeon (Dental) (General) in the Notification No.01/2013, dated 31.03.2013, he applied for the post and also appeared in the written examination held on 19.05.2013 and he was successful. He was provisionally selected by the MRB for the post of Assistant Surgeon (Dental) in their notification dated 12.06.2013 in No.4/MRB/E4/2013.

3.2. The MRB issued the notification dated 19.06.2013 calling for the provisionally selected candidates for certificate verification and to produce the original certificates on 29.06.2013. The petitioner requested the College of Dental Sciences, Devangare, Karnataka State, to provide him the original certificates so as to produce the same for certificate verification, as he was selected for the post of Assistant Surgeon (Dental). Accordingly, the College gave him the certificates. He produced those certificates on 29.06.2013.

3.3. Later, MRB issued a notification dated 12.09.2013 in No.7&8/MRB/E4/2013, selecting the petitioner and others for the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Service. He was informed that the date of counselling for the place of posting would be intimated shortly. Thereafter, he participated in the counselling held on 17.09.2013 and has chosen the place of posting.

3.4. While so, based on the counselling, the Director of Medical and Rural Health Services, Chennai, sent a communication in Ref.No.7169/E6/2013, dated 17.09.2013, stating that he is posted at Government Hospital, Kandarakottai, Pudukottai District. He was directed to join duty within 30 days from the date of receipt of the said memo. He was further directed to produce the original B.D.S. Certificate, community certificate along with original Transfer Certificate with proper relief from the Dental College to collect the posting order.

3.5. In these circumstances, he made representations dated 25.09.2013, 07.10.2013 and 21.10.2013 to the authorities to give him time to join the post of Assistant Surgeon (Dental) till he completes the M.D.S. Course and it is stated therein that he would shortly complete the course.

3.6. Since no orders were passed on his representations, he filed W.P.No.31501 of 2013 seeking for a direction to the first respondent therein to consider and pass order on the representations and this Court passed an order dated 06.12.2013 directing the Secretary to Government, Health and Family Welfare Department, to pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of that order.

3.7. Based on the order of this Court, referred to above, the Secretary to Government passed the order dated 18.03.2014 refusing to grant time to join duty till completion of M.D.S. Course.

3.8. The petitioner thereafter filed this W.P.No.8793 of 2014 seeking to quash the order of the Government dated 18.03.2014 and for a consequential direction to the first respondent to extend the time limit for three months to furnish the original educational qualification certificates as well as Transfer Certificate so as to enable him to join duty as Assistant Surgeon (General) in the Government Hospital, Gandharvakottai, Pudukottai District.

3.9. When the matter came up for admission on 25.03.2014, it was posted along with other W.P.Nos.28959 to 28961 of 2013.

3.10. The petitioner filed amendment petition in M.P.No.1 of 2015 in W.P.No.8793 of 2015 seeking to modify the second limb of prayer, viz., consequential direction to the second respondent to issue appointment order to him pursuant to the selection for the post of Assistant Dental Surgeon (General) vide Notification dated 12.09.2013 in No.7/MRB/E4/2013, instead of extension of time, as stated above.

3.11. Further, it is relevant to note that no interim order was granted in his case and this writ petition was directed to be posted along with W.P.Nos.28959 to 28961 of 2013.

W.P.No.9595 of 2014 :

4.1. The petitioner obtained Bachelor of Dental Surgery in the year 2007 and she successfully completed the compulsory CRRI for a period of one year. She belongs to Backward Community.

4.2. While so, based on the notification dated 31.03.2013 issued by the MRB for recruitment to the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Services, she made application. She appeared for the written examination, that was conducted on 19.05.2013. The petitioner was kept in Sl.No.2 in the reserve list under B.C. Category. She was not selected to the post of Assistant Surgeon as on date.

4.3. The grievance of the petitioner is that the aforesaid four petitioners in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014 did not join the post within the period of 30 days, as per the order dated 17.09.2013 issued by the Director of Medical and Rural Health Services, Chennai, and hence, those posts shall be deemed to be vacant and she shall be appointed in the post, as she stood first in the reserve list now, as the person, who ranked No.1 in the reserved list, was selected and was issued appointment order.

4.4. She made a representation dated 21.10.2013 to the Government and also sent a representation dated 26.10.2013 by Speed Post to issue posting order, particularly, when the person stood first earlier in the reserve list, namely, one Mr.Jafer Sadik, was given posting order and there were four vacancies, due to the non-joining of the aforesaid four selected candidates.

4.5. Since her application was not disposed of, she filed W.P.No.29578 of 2013 before this Court seeking a direction to the respondents therein to consider her representations and to issue posting order as Assistant Surgeon (Dental) to her, since four persons, the petitioners in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014, did not join duty and therefore, the

posts, to which they were appointed, are lying vacant.

4.6. This Court disposed of W.P.No.29578 of 2013 on 27.01.2014 directing the respondents therein to pass orders on her representation dated 26.10.2013 within a period of four weeks from the date of receipt of a copy of that order.

4.7. Thereafter, the Secretary to Government, Health and Family Welfare Department, passed an order dated 28.02.2014, pursuant to the order of this Court, stating that there is no vacancy in Tamil Nadu Medical Service at present and the request of the petitioner would be considered, if any one of the candidates in the selection list fails to join duty.

4.8. The petitioner thereafter filed this writ petition questioning the said order dated 28.02.2014 with a consequential direction to the official respondents to appoint her to the post of Assistant Surgeon (Dental) by cancelling the selection of the respondents 4 to 7, who are the petitioners in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014, in view of Clause 10(ii) of the Notification No.01/2013, dated 31.03.2013 issued by the MRB.

4.9. Since this Court granted interim order in favour of the petitioners in W.P.Nos.28959 to 28961 of 2013, the petitioner herein got impleaded herself in those writ petitions as the fifth respondent therein and sought to vacate the interim order.

5. The official respondents filed separate counter-affidavits in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014. No counter-affidavit is filed by the official respondents in W.P.No.9595 of 2014. Since the petitioners in W.P.Nos.28959 to 28961 of 2013 were made as respondents 4 to 6 in W.P.No.9595 of 2014, those writ petitioners/the respondents 4 to 6 in W.P.No.9595 of 2014, filed counter-affidavit in W.P.No.9595 of 2014 refuting the allegations made by the petitioner therein.

6.0. The crux of the counter-affidavit filed by the official respondents is that the petitioners in W.P.Nos.28959 to 28961 of 2013 should have joined duty within 30 days from the date of receipt of appointment order dated 17.09.2013 and they shall not seek for extension of time, citing the reason that they are undergoing higher studies or P.G. Course or any other reasons.

6.1. The official respondents placed heavy reliance on Clause 10(ii) of the notification dated 31.03.2013 of the MRB calling for applications for the post of Assistant Surgeon (Dental). They extracted Clause 10 (ii) of the notification in

the counter-affidavit.

6.2. It is the specific case of the official respondents that since the petitioners in W.P.Nos.28959 to 28961 of 2013 failed to join duty within 30 days from the date of receipt of the order dated 17.09.2013, providing them appointment, by producing original B.D.S. Certificate and Transfer Certificate with proper relieving order from the Tamil Nadu Government Dental College, Chennai, wherein, they were pursuing M.D.S., they are not entitled to seek extension of time to join duty after completion of P.G. Course, and hence, these writ petitions deserve to be dismissed.

6.3. In the counter-affidavits filed by the official respondents in W.P.No.8793 of 2014, it is stated that the writ petitioner failed to join duty within 30 days from the date of receipt of the order dated 17.09.2013, providing appointment, by producing original B.D.S. Certificate and Transfer Certificate with proper relieving order from the Dental College where he pursued higher studies and hence, he is not entitled to seek extension of time to join duty after completion of P.G. Course. They sought for dismissal of this writ petition.

7. Heard the learned counsel for the petitioners in W.P.Nos.28959 to 28961 of 2013, learned counsel for the petitioner in W.P.No.8793 of 2014 and the learned counsel for the petitioner in W.P.No.9595 of 2014 and the learned Additional Advocate General.

8.1. The learned counsel for the petitioners in W.P.Nos.28959 to 28961 of 2013 submitted that the petitioners were willing to discontinue the P.G. Course, namely, M.D.S. In Tamil Nadu Government Dental College, Chennai, and the learned counsel has brought to my notice the representation dated 08.10.2013 made to the Director of Medical and Rural Health Services and also the representation dated 21.10.2013 submitted to the Principal of the Tamil Nadu Government Dental College, Chennai, in this regard. The learned counsel submitted that since no orders were passed on their representations, they have no option, but to approach this Court by way of these writ petitions seeking direction to return their original certificates so as to join the post of Assistant Surgeon (Dental).

8.2. The learned counsel has specifically emphasised the prayer in the writ petitions and submitted that the prayer is only to return the original certificates for joining the post and the petitioners were willing to discontinue the M.D.S., Course so as to join the post of Assistant Surgeon (Dental) and

to continue and complete the course within six years thereafter with two breaks, as per the Rules. It is submitted that in view of the said prayer, this Court also thought it fit to grant interim orders on 29.04.2013.

8.3. The learned counsel for the petitioners relied on various judgments, that are enclosed in the typed-set of papers, in support of her submissions that the original certificates cannot be retained by the colleges for any reason whatsoever.

8.4. The learned counsel also submitted that since the petitioners joined the M.D.S. course through the All India Quota on merits, pursuant to selection in the All India Entrance Examination, the prospectus for M.D.S., issued by the Director of Medical Education stipulating a condition to execute a bond with three sureties for a sum of Rs.10,00,000/- undertaking to serve Government of Tamil Nadu for a period of two years, if required, is not binding them.

8.5. The learned counsel submitted that in any event, the certificates cannot be retained by the authorities and at the most, if the candidates have to pay certain amounts as per the bond executed by them, the authorities could recover the amount as per the bond, but the authorities could not retain certificates affecting the career of the students.

8.6. The learned counsel for the petitioners in W.P.No.28959 to 28961 of 2013 relied on the followed judgments in this regard :

(i) dated 21.09.2012 in W.P.Nos.23241 to 23255 of 2012 (Himal Raj, M and others V. The Registrar, Tamil Nadu Medical University and others);

(ii) dated 02.04.2013 in W.P.Nos.7263 to 7268 of 2013 (Dr.Raji Rajan V. The State of Tamil Nadu, rep. by Secretary to Health and Family Welfare Department, Fort St. George, Chennai); and

(iii) dated 19.04.2013 in W.P.No.11200 to 11213 of 2013 (Dr.Arul Prakash N. Vs. The Secretary to Government, Health and Family Welfare Department, State of Tamil Nadu, Fort St. George, Chennai).

9.1. The learned counsel for the petitioner in W.P.No.8793 of 2014 submitted that though this Court did not grant any interim order in favour of the petitioner, the post, to which he was appointed, is still vacant and he can be given appointment order in that place, as he was selected on merit. The learned counsel for the petitioner brought to my notice the affidavit filed by the official respondents dated 30.03.2015, pursuant to the direction issued by this Court on 24.03.2015

directing the official respondents to give the details of the vacancies position in the post of Assistant Surgeon (Dental/General), wherein, the official respondents stated that the post of Assistant Surgeon at Government Hospital, Gandarvakottai, Pudukottai District, to which, the petitioner was posted is still kept vacant and nobody is appointed in the said post. But for keeping the post vacant and but for the affidavit of the official respondents, referred to above, the learned counsel for the petitioner submitted that the petitioner could have no case. In these circumstances, the petitioner could be permitted to join the post by issuing appropriate order.

9.2. The learned counsel has also relied on the orders of this Court dated 27.03.2008 in W.P.Nos.35272 to 35274 of 2007 and in W.P.No.36237 of 2007.

10. The learned counsel for the petitioner in W.P.No.9595 of 2014 submitted that since the petitioners in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014 did not join the post within 30 days as per the order dated 17.09.2013 of the Director of Medical and Rural Health Services, Chennai, those posts are deemed to be vacant and therefore, she is entitled to get appointment, as she is the first candidate in the reserve list under BC category.

11.1. The learned Additional Advocate General vehemently contended for dismissal of all the writ petitions. He submitted that the writ petitioners in W.P.Nos.28959 to 28961 of 2013 and in W.P.No.8793 of 2014 are not entitled to join the post of Assistant Surgeon (Dental), since they failed to join the post within 30 days time as given in the order dated 17.09.2013 of the Director of Medical and Rural Health Services, Chennai.

11.2. The learned Additional Advocate General placed heavy reliance on Clause 10(ii) of the notification dated 31.03.2013 of MRB calling for applications to the post of Assistant Surgeon. According to him, the said clause 10(ii) mandates that for whatever be the reason including the reason to continue higher studies, the candidates shall not seek extension of joining time beyond 30 days.

11.3. The learned Additional Advocate General placed reliance heavily on the order passed by a learned Single Judge of this Court in Dr.D.Ramachandran and Dr.N.Praveen V. The Director of Public Health and Preventive Medicine, reported in MANU/TN/9688/2007 and also the judgment in Dr.Saravanan V. The Director of Public Health and Preventive Medicine, reported in

MANU/TN/9685/2007, wherein, the aforesaid judgment in MANU/TN/9688/2007 was followed. Both these judgments are upheld by a Division Bench of this Court in W.A.(MD)Nos.89 to 91 of 2008 on 05.02.2008.

11.4. The learned Additional Advocate General also relied on the judgment of a Division Bench of this Court in Dr.M.Vennila V. Tamil Nadu Public Service Commission, 2006 WLR 574, that was followed by the learned Single Judge in the orders, referred to above. According to the learned Additional Advocate General, the Division Bench of this Court in Dr.M.Vennila V. Tamil Nadu Public Service Commission, 2006 WLR 574, categorically reiterated the well-settled law that the clauses contained in the instructions to the candidates and in the brochures along with the application shall bind the candidates, who made the application pursuant to the notification and therefore, as per Clause 10(ii) of the notification dated 31.03.2013, the candidates were put on notice that they shall join duty within 30 days from the date of receipt of the appointment order by producing the original certificates and extension of time to join the post after completion of P.G. Course cannot be entertained. Therefore, the petitioners in W.P.Nos.28959 to 28961 of 2013 and 8973 of 2014 are not entitled to seek to join the post, in view of the categorical decisions of this Court, referred to above.

12. I have considered the submissions made by either side.

13. The factual details are not in serious dispute.

14.1. All the petitioners in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014 applied for the post of Assistant Surgeon (Dental)(General), pursuant to the notification dated 31.03.2013 issued by the MRB. Clause 10(ii) of the notification, which is heavily relied on, is extracted hereunder :

"10. SPECIAL INSTRUCTIONS

i)

ii) Successful candidate shall join duty within 30 days the date of receipt of appointment orders and shall not claim extension of joining time citing that he was undergoing higher studies / P.G. Course or for any other reason. He shall abide by the condition that his/her name will be removed from the approved list without assigning any reasons there for, it he/she fails to join duty

within the stipulated time.
iii) to vi)"

14.2. The notification makes it very clear that the successful candidates shall join duty within 30 days from the date of receipt of appointment order and they shall not claim extension of joining time citing that they were undergoing higher studies or P.G. Course or any other reason. It is also stated in Clause 10 that the candidates shall abide by the aforesaid undertaking. Therefore, it is made very clear that no selected candidates shall seek time to join duty beyond 30 days, on receipt of appointment order.

14.3. In fact, the learned counsel for the petitioners have not disputed about the aforesaid undertaking and mandatory nature of the said undertaking.

15.0. In the order in Dr.Ramachandran's case (cited supra), that arose out of W.P.Nos.9694 and 9695 of 2007, this Court categorically held that the selected candidates shall not be given time to join the post of Assistant Surgeon after completing P.G. Degree Course, since keeping the post of Assistant Surgeon vacant is against the interest of the public.

15.1. The petitioner in W.P.No.9694 of 2007 had completed M.B.B.S. Course and thereafter, he joined M.D. General Medicine in Thanjavur Medical College in May 2006. While so, he was selected for the post of Assistant Surgeon in the Tamil Nadu Medical Service by an order dated 15.07.2006, pursuant to the selection conducted by the TNPSC. He applied for relaxation of Rule 21(a) of the Special Rules for Tamil Nadu Medical Services. The Director of Public health and Preventive Medicine, by the proceedings dated 29.07.2006 permitted the petitioner to join the post of Assistant Surgeon in the Primary Health Centre, immediately after completion of the P.G. course.

15.2. While so, the persons in the reserved list filed W.P.Nos.46644 and 45484 of 2006 seeking to appoint the persons in the reserved list in the vacant posts due to the non-joining of the selected persons within the stipulated time.

15.3. This Court passed an order dated 04.09.2007 in W.P.Nos.46644 and 45484 of 2006 directing the Director of Public Health and Preventive Medicine, Chennai, to send proposals with regard to the details of candidates, who did not join duty within four weeks to the Tamil Nadu Public Service Commission for issuing appointment orders to the candidates in the reserved list. As keeping the post of Doctor vacant would cause serious

prejudice to the patients, such a direction was issued.

15.4. In view of the aforesaid order, the Director of Public Health and Preventive Medicine cancelled the earlier order dated 29.07.2006 and issued the order on 09.11.2007 directing the petitioner to report for duty within 7 days failing which his name would be removed from the selection list and the persons in the reserved list would be posted in his place.

15.5. Thereafter, he filed W.P.No.9694 of 2007 questioning the order dated 09.11.2007 and sought direction to join duty after completing M.D. Course.

15.6. Likewise, the petitioner in W.P.No.9695 of 2007, after completing M.B.B.S. Course, was selected to undergo P.G. Diploma course in Radio Diagnosis in Thanjavur Medical College from June 2006 and the duration of the said P.G. Diploma course is two years.

15.7. In the meanwhile, the petitioner therein was selected for the post of Assistant Surgeon by the TNPSC and he was posted at the Primary Health Centre, Melakodumalur, Paramakudi, by an order dated 28.06.2006.

15.8. He also obtained permission to join the duty after completion of P.G. Diploma course by the order dated 29.07.2006 of the Director of Public Health and Preventive Medicine, Chennai.

15.9. He was also directed to join the post within a period of one week by the order dated 09.11.2007.

15.10. He filed W.P.No.9695 of 2007 seeking to quash the said order dated 09.11.2007 and he also sought for a direction to join the post after completion of the course as per the earlier order dated 29.07.2006.

15.11. Both the writ petitions were disposed of by a detailed common order dated 22.11.2007. The learned Single Judge considered the relevant clauses in the notification calling for applications to the post of Assistant Surgeon and extracted the concerned clauses in the order which read as hereunder :

"(ii) Candidates selected for appointment should join duty within 30 days. No extension of joining time will be granted under any circumstances, even if they are undergoing higher studies/Post Graduate Course. The name of the candidates who do not join duty within the stipulated time would be removed from the approved list without assigning any reasons therefor.

(iii) Those who are undergoing Post-Graduate

Course and applying for the post of Assistant Surgeon, should submit a declaration to the effect that they will join duty within the time limit of 30 days in the event of their appointment to the post of Assistant Surgeon."

15.12. The learned Judge has followed the Division Bench judgment of this Court in Dr.M.Vennila V. Tamil Nadu Public Service Commission, 2006 WLR 574, and held that the Clauses in the notification calling for application shall bind the candidates. The learned Single Judge also held that the petitioners therein cannot seek time to join the post after completion of the P.G./P.G. Diploma course, in view of the clauses contained in the notification calling for the applications to the post of Assistant Surgeon. The learned Judge also relied on the directions issued by this Court in the order dated 04.09.2007 in W.P.Nos.46644 and 45484 of 2006 directing to fill the vacant posts, due to the non-joining of the persons selected, from the reserved list.

15.13. This Court held that the people cannot suffer by keeping the post vacant due to the non-joining of selected persons in the Government Hospitals and the right to health forms part of basic human right guaranteed under Article 21 of the Constitution and the same would be seriously prejudiced, if the posts are not immediately filled up after the selection.

16.0. The said judgment was followed by the same learned Judge in Dr.R.Saravanan V. The Director of Public Health and Preventive Medicine, reported in MANU/TN/9685/2007.

16.1. When the said case, along with other cases, was taken before a Division Bench in W.A.Nos.89 to 91 of 2008, the Division Bench dismissed the same on 05.02.2008.

16.2. Therefore, the law is well-settled that the persons selected for the post of Assistant Surgeon cannot seek time to join the post after completion of P.G. Course. There is no quarrel over the same. Even the learned counsels for the petitioners also have not disputed the proposition.

17.1. The learned counsel for the petitioner in W.P.Nos.28959 to 28961 of 2013 has submitted that knowing fully well the aforesaid legal position, the petitioners have only sought for the return of the original certificates and they decided to discontinue their P.G. Studies, though they were selected under All India merit quota. They made categorical

representations dated 08.10.2013 to the Director of Medical and Rural Health Services and dated 21.10.2013 to the Principal of their College to give them original certificates so as to join the post and to permit them to discontinue the P.G. Course studies and to complete the course as permitted under the Rules. Since no orders were passed on their representations, they filed the writ petitions seeking for a direction to return the original certificates to join the post.

17.2. It is relevant to extract the prayer in W.P.No.28959 of 2013 which reads hereunder :

"For the reasons stated in the accompanying affidavit it is humbly prayed that this Hon'ble Court may be pleased to issued a WRIT OF MANDAMUS or any other appropriate writ, order or direction in the nature of a writ, directing the third respondent herein to forthwith return the original certificates submitted by the petitioner with transfer certificate to the petitioner with proper relief by break of study from our PG Course so as to enable the petitioner to join the post of Assistant Surgeon (Dental) in Tamil Nadu Medical Services at GH, Manamadurai, Sivagangai District, pursuant to letter of the second respondent in Ref No.7169/E6/4/2013, dated 17.09.2013 subject to the condition that the petitioner would complete the course as per the prospectus within a period of six years with two breaks"

17.3. Similar is the prayer in the other two writ petitions in W.P.Nos.28960 and 28961 of 2013. Since the prayer in these writ petitions is only to return the original certificates so as to join duty, this Court granted an interim order on 29.10.2013 extending time to join duty until further orders. It is useful to extract the interim order dated 29.10.2013 :

"Time limit given in the order, dated 17.09.2013 to the petitioners to join the duty is extended until further orders."

The said order is still is force.

18.1. The learned counsel for the petitioners in W.P.Nos.28959 to 28961 of 2013 has placed reliance on the judgment of this Court in Dr.S.Rajesh V. State of Tamil Nadu, reported in (2009) 1 MLJ 1103. The learned Single Judge has framed the following issues for consideration in the said case

in paragraph 12 of the judgment :

"1) Whether the respondents are justified in getting bonds from the candidates selected under All India Quota ?

2) Whether the candidates selected under the Non-Service Quota in the State selection are entitled to challenge the prospectus, after joining in the course and after completion of the course ?

3) Whether the G.O.Ms.No.215 Health and Family Welfare Department, dated 12.6.2007, ordering retention of original certificates of the PG Degree /Diploma Holders on their completion of respective course, is valid ?

4) Whether the respondents can deny the rights of the PG Degree/Diploma Holders to apply for the super speciality courses, merely because they have not completed the bond period ?"

18.2. As far as the issue Nos.1, 3 and 4, the learned Judge held in favour of the petitioners therein. The learned Judge categorically held that the candidates selected under All India Quota are not bound by the conditions of bond executed pursuant to the admission in M.D.S. Course based on the prospectus issued by the Director of Medical Services, since those persons / candidates did not join the course, pursuant to the said prospectus.

18.3. While answering the issue No.2, the learned Judge held that the persons, who joined the P.G. Course other than All India Quota, are bound by the bond executed by them and they have to pay the amount as stipulated in the bond, if they leave the P.G. Course or P.G. Diploma Course in the middle.

18.4. However, the learned Judge held, while deciding the issue Nos.3 and 4, that in any event, no one can retain the original certificates of the candidates. Placing reliance on the execution of the bond, though the Government authorities are entitled to recover the money as per the terms of the bond, the certificates cannot be retained affecting the career of the students.

18.5. In fact, it is useful to extract the following passage in paragraph 24 of the said judgment in (2009) 1 MLJ 1103, while answering the issue No.3, as hereunder :

"24. Hence on any account, the petitioners'

certificates cannot be retained by the respondents for any reason much less for enforcing the bond condition. Even in respect of the persons joined in PG Degree/Diploma courses subsequent to the issuance of the Government order, the respondents cannot retain the said certificates as the certificates belong to the petitioners and the same are required for registration in the Medical Council, to pursue their higher studies and for joining any private institutions. What is required under the bond executed by the petitioners is that they can either serve for three years or the respondents can demand a sum of Rs.2/Rs.3 lakhs for the breach of bond conditions. If for any reason petitioners are not willing to join, the respondents can only demand the said amount and therefore the condition to retain the certificates till the completion of two years of service is arbitrary and irrational."

18.6. Thus, it is held that when the candidates seek for the original certificates, the authorities are bound to return the same. The aforesaid order was followed consistently by this Court in various writ petitions including the orders (i) dated 21.09.2012 in W.P.Nos.23241 to 23255 of 2012 (Himal Raj, M and others V. The Registrar, Tamil Nadu Medical University and others); (ii) dated 02.04.2013 in W.P.Nos.7263 to 7268 of 2013 (Dr.Raji Rajan V. The State of Tamil Nadu, rep. by Secretary to Health and Family Welfare Department, Fort St. George, Chennai); and (iii) dated 19.04.2013 in W.P.No.11200 to 11213 of 2013 (Dr.Arul Prakash N. Vs. The Secretary to Government, Health and Family Welfare Department, State of Tamil Nadu, Fort St. George, Chennai).

18.7. I am also of the view that the authorities, for any reason whatsoever, cannot retain the original certificates affecting the life and career of the persons. At the most, the authorities could recover the money, that is due, either under bond or otherwise. But the same cannot be a valid reason to retain the original certificates.

19. This Court protected the interest of the petitioners in W.P.Nos.28959 to 28961 of 2013, while granting interim order, as their original certificates were not returned, though the petitioners asked for the same for joining the post. Therefore, I am of the view that the petitioners in W.P.Nos.28959 to 28961 of 2013 are entitled to succeed and their

original certificates shall be returned to them so as to join the post, for which, they were selected and further in the counter-affidavits of the official respondents, it is stated that the places, to which these petitioners were selected and posted, are kept vacant as per the orders of this Court.

20.1. Now coming to W.P.No.8793 of 2014, the petitioner sought extension of time to join the post till he completes the M.D.S. Course. According to him, only a few months are left to complete the M.D.S. Course. The Government rejected his request in the impugned order dated 18.03.2014, that is questioned in this writ petition, by refusing to grant time, as sought for by the petitioner to join the post after completing the M.D.S. Course. It is stated in the order dated 18.03.2014 that the post of Assistant Surgeon is much required to cater the need of the poor public and in the public interest, the request of the petitioner seeking extension of time to join duty after completing the M.D.S., Course cannot be complied with and accordingly, his request was rejected.

20.2. In view of the aforesaid discussion and more particularly, in view of the categorical pronouncement by this Court in Dr.D.Ramachandran and Dr.N.Praveen V. The Director of Public Health and Preventive Medicine, reported in MANU/TN/9688/2007 and Dr.Saravanan V. The Director of Public Health and Preventive Medicine, reported in MANU/TN/9685/2007, that was upheld by the Division Bench also, as stated supra, I do not find any infirmity in the order dated 18.03.2014 of the Government refusing to grant time to join the post of Assistant Surgeon in the hospital, to which, the petitioner was appointed after completing the M.D.S. Course.

20.3. In view of the aforesaid conclusion and as there is no interim order in favour of this writ petition, this writ petition must fail. But, the fortunate favours the petitioner, in view of the affidavit of the official respondents dated 30.03.2015. But for the affidavit dated 30.03.2015 of the official respondents, the writ petition must fail.

20.4. At this juncture, it is relevant to note that when the matters were listed before this Court on 24.03.2015, this Court passed the following order :

"The petitioners in W.P.Nos.28959 to 28961 of 2013 and the petitioner in W.P.No.8793 of 2014 were selected for appointment to the post of Assistant Surgeon (Dental/General) by the Medical Service Recruitment Board. Since the petitioners failed to get the certificates from the Dental College, they

could not join before the cut-off date. The petitioners in W.P.Nos.28959 to 28961 of 2013 obtained interim order from this Court extending the time for appointment. The interim order is still in force. Though the petitioner in W.P.No.8793 of 2014 also made a request, the fact remains that there is no interim order in his favour.

2. The petitioner in W.P.No.9595 of 2014 is a wait listed candidate. Her name was included at Sl.No.2 of the Reserve List. The first among the Reserve List by name Jafer Sadik got appointment subsequently. The petitioner in W.P.No.9595 of 2014 submitted a representation to the Government to consider her for appointment as Assistant Surgeon by operating the Reserve List. The Government by communication dated 28.02.2014 informed the petitioner that there is no vacancy as on today and in case any of the candidate in the selection failed to join duty, she would be considered. The said order is challenged in W.P.No.9595 of 2014.

3. The factual matrix indicates that the petitioners in W.P.No.28959 of 28961 of 2013 and W.P.No.8793 of 2014 were appointed as Assistant Surgeon (Dental/General). However, they could not join service on account of non-production of original certificates. The petitioner in W.P.No.9595 of 2014 is the second in the Waiting List and in view of the appointment to the person shown at Sl.No.1 in the Reserve List, she is eligible for appointment. In case, there are five posts of Assistant Surgeons, all the petitioners could be accommodated.

4. There shall be an interim direction to respondents 1 and 2 to file an affidavit indicating the vacancies now available in the post of Assistant Surgeon (Dental/General) in the Tamil Nadu Dental College. The affidavit should be filed as expeditiously as possible and in any case on or before 30.03.2015.

Post the matter on 31.03.2015 along with W.P.No.25959 of 2013 and 8793 of 2014."

20.5. This Court has categorically noted in the order that the petitioner in W.P.Nos.28959 to 28961/2013 are enjoying the interim order, but the petitioner in W.P.No.8793/2014 is not granted any interim order. However, this Court directed the

official respondents to file an affidavit indicating the vacancies available in the post of Assistant Surgeon (Dental/General) as only five persons are before this Court and whether five posts are available to accommodate those five persons who are before this Court.

20.6. Pursuant to the aforesaid order dated 24.03.2015, a common affidavit is filed by the official respondents dated 30.03.2015 in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014. It is useful to extract the following passage in paragraph 5 of the common affidavit filed by the official respondents :

"5. In pursuant to the above direction of the Hon'ble High Court of Madras, it is submitted that there are no vacancies in Tamil Nadu Government Dental College and Hospital, Chennai, under the category of the post Assistant Surgeon (Dental/General) and the following places are kept vacant as per the stay orders of the Hon'ble High Court of Madras dated 29.10.2013 in W.P.No.28959 to 28961 of 2013 issued in respect of the petitioners Dr.T.T.Karthikeyan, Dr.M.Kirthika, Dr.M.Bhaskar and in respect of the writ petition pending before the Hon'ble High Court of Madras filed by Dr.D.Ajay Praveen in W.P.No.8793 of 2014

- 1) Government Hospital, Manamadurai, Sivagangai District
- 2) Government Hospital, Gingee, Villupuram District
- 3) Government Hospital, Valparai, Coimbatore District.
- 4) Government Hospital, Gandarvakottai, Pudukottai District"

20.7. Though the petitioner in W.P.No.8793 of 2015 did not obtain any interim order, the official respondents choose to keep the post to which, this petitioner was appointed vacant. In those circumstances, the learned counsel for the petitioner in W.P.No.8793 of 2014 sought for a direction to the respondents to permit him to join duty.

20.8. The learned counsel for the petitioner in W.P.No.8793 of 2014 also placed reliance on the orders of this Court dated 27.03.2008 in W.P.Nos.35272 to 35274 of 2007 and W.P.No.36237 of 2007. In those cases, this Court, while upholding the similar orders of the Government declining to grant time to join the post after completing P.G. Course, that are questioned in those writ petitions, granted 10 days time to

the petitioners therein to join the post.

20.9. The learned counsel for the petitioner in W.P.No.8793 of 2014 seeks for disposal of this writ petition also adopting such a course of granting 10 days time to the petitioner.

20.10. It is not in dispute that the post, to which he was appointed, is kept vacant and he was selected on the basis of merit. Since the official respondents have kept the post vacant, I am of the view that the petitioner is also entitled to seek posting order in the place to which he was appointed. It is a different matter that if the official respondents filled up the post, to which, the petitioner in W.P.No.8793 of 2014 was appointed, from the reserved list and in such an event, this Court could not interfere with the appointment, in view of the well-settled law.

20.11. But in this case, the official respondents choose to keep the post vacant, though there is no interim order granted by this Court in this regard, while this Court granted interim order in W.P.No.28959 to 28961 of 2013. Admittedly the petitioner in W.P.No.8793 of 2014 was selected based on merit, while the petitioner in W.P.No.9595 of 2014 was not selected and she is only kept in the reserved list.

20.12. In the said circumstances, while upholding the order of the Government dated 18.03.2014, that is questioned in W.P.No.8793 of 2014, I am inclined to issue a direction to the official respondents to permit the petitioner in W.P.No.8793 of 2014 to join the post of Assistant Surgeon (General/Dental) as per the communication dated 17.09.2013 within a period of ten days from the date of receipt of a copy of this order, if he produces the original certificates, as required by the authorities.

21. The official respondents filed a common affidavit dated 30.03.2015 in W.P.Nos.28959 to 28961 of 2013 and 8793 of 2014 stating that there are no vacancies, except the above said four vacancies. Hence, the petitioner in W.P.No.9595 of 2015, who is in the reserved list, cannot seek appointment as a matter of right. Hence, this writ petition fails and the same is liable to be dismissed.

22. In the result,

1) W.P.Nos.28959 to 28961 of 2013 are allowed and a direction is issued to the official respondents to return the original certificates to the petitioners and to permit them to join in the post of Assistant Surgeon (General), to which they

are appointed.

2) While upholding the order of the Government dated 18.03.2014, W.P.No.8793 of 2014 is disposed of with a direction to the official respondents to permit the petitioner to join the post of Assistant Surgeon (General) within a period of 10 days from the date of receipt of a copy of this order, if he produces the original certificates and documents, as required, to join the post.

3) W.P.No.9595 of 2014 is dismissed.
However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gg

To

1. The Principal Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Director of Medical and Rural
Health Services,
Tamil Nadu, Chennai - 600 006.
3. The Director of Medical Education,
Chennai - 600 010.
4. The Chairman,
Medical Services Recruitment Board,
7th Floor, DMS Building,
No.359, Anna Salai, Chennai - 6.

5. The Principal,
Tamil Nadu Government Dental College,
Chennai - 600 002.

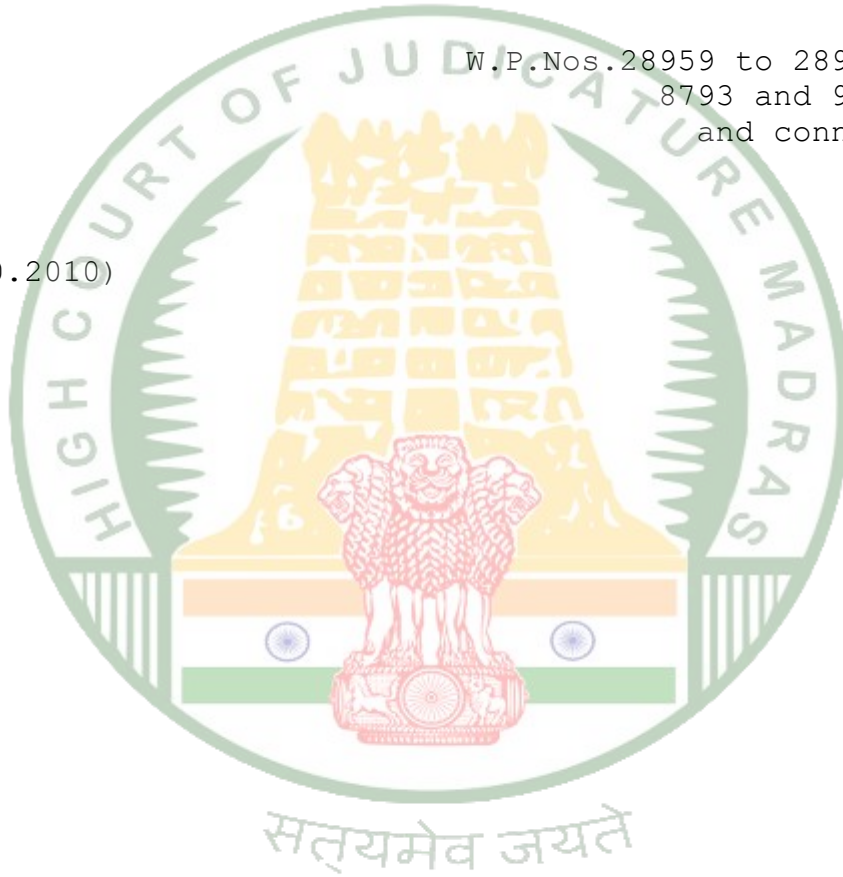
1 CC to Mr.G.Arulmurugan, Advocate SR.No. 57199

1 CC to Mr.M.Baskaran, Advocate SR.No. 57177

1 CC to M/s.Radha Gopalan, Advocate SR.No. 57326

W.P.Nos.28959 to 28961 of 2013,
8793 and 9595 of 2014
and connected M.Ps.

JSV (CO)
PSI (28.10.2010)



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