

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.1000 of 2017

and

C.M.P.No.14043 of 2017

1. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
 2. The Deputy Director (Health),
Railway Board,
Rail Bhavan,
New Delhi.
 3. The Chief Medical Director,
Southern Railway,
Moore Market Complex,
Chennai - 600 003.
 4. The Medical Director,
Southern Railway Head Quarters Hospital,
Ayanavaram, Perambur,
Chennai-600 023.
 5. The Additional Chief Health Director,
And DNB Co-ordinator,
Southern Railway Head Quarters Hospital,
Ayanavaram, Perambur,
Chennai - 600 023.
- ... Appellants

Vs.

- 1.Dr.P.Barath Kumar Singh
- 2.Dr.S.Subashini
- 3.Dr.Ajoy Kumar Deka
- 4.Dr.Karthikha
- 5.Dr.Sandip Kumar Buha
- 6.Dr.Aparna Gaini
- 7.Dr.G.Shobana
- 8.Dr.Siva Shankar N.
- 9.Dr.Asha.R.
- 10.Dr.Nagakeerthi
- 11.Dr.Jagadish Laxmansa Katwa

12.Dr.Sunil.C
13.Dr.P.G.Vijaykarthik
14.Dr.Vidya Sagar Uppala
15.Dr.Arun Pragadish Ram.R.M.
16.Dr.Rahul Garke
17.Dr.Jithin P.S.
18.Dr.E.Nithin Siromony
19.Dr.Madhuvanthi Rajendran
20.Dr.Sudahar R.
21.Dr.Shanima R.
22.Dr.Ananth Prasad
23.Dr.Vidya Sagar Madhavaram
24.Dr.Hari Krishna
25.Dr.Shah Simit Vinod
26.Dr.Divya

27.The Union of India,
Rep.by the Secretary to Government,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, New Delhi.

28.The Director,
National Board of Examinations,
(Ministry of Health and Family Welfare
Government of India).
NAMS Building, Ansari Nagar,
Mahatma Gandhi Marg,
New Delhi - 110 029.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order passed in W.P.No.26274 of 2016, dated
21.06.2017.

W.P.No.26274 of 2016 : Petition filed under Article 226 of the
Constitution of India, seeking for a Writ of Mandamus,
forbearing the respondents 3 to 7 from implementing the
revised fee structure and stipend guidelines prescribed by the
National Board of Examinations and adopted by the Railway
Board as contained in the Letter of the 4th respondent dated
31.10.2014 and the consequent circular issued by the 7th
respondent dated 27.11.2014.

For Appellants : Mr.P.T.Ramkumar

For Respondents : Mr.V.Selvaraj, Senior Counsel
for Mr.D.Jaya Singh
for R1 to R26

Mr.J.Madana Gopal Rao
CGSC for R27

Mr.Muthusamy for
M/s.D.Anand Swamy & Dhrva for R28

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. Issue notice. Mr.V.Selvaraj, learned Senior Counsel accepts notice on behalf of respondent Nos. 1 to 26. Mr.J.Madana Gopal Rao, accepts notice on behalf of respondent No.27. Mr.Muthusamy, accepts notice for respondent No.28.

1.1. Respondents 1 to 26 are the original writ petitioners. In effect respondent Nos.1 to 26 are the contesting parties, being the beneficiaries of the directions contained in the impugned judgment passed by the learned single Judge.

1.2. The other respondents i.e. Respondent Nos.27 and 28 are the official respondents. Respondent No.27 is the Union of India, while respondent No.28 is the Director, National Board of Examinations (herein after referred to "NBE").

1.3. With the consent of all the Counsel for parties, the captioned appeal is taken up for final hearing and disposal at this stage itself. The learned counsel for the parties, who appear for the respondents submit that they do not wish to file counter affidavits in the matter.

2. This is an appeal preferred against the judgment of the learned single Judge dated 21.06.2017, passed in W.P.No.26274 of 2016.

3. By virtue of the instant appeal, challenge has been laid to the judgment of the learned single Judge dated 21.06.2017. The prayer made in the writ petition was for issuance of a mandamus forbearing the appellants herein, i.e., original respondent Nos.3 to 7 from implementing, inter alia, the revised stipend guidelines prescribed by NBE and those adopted by Railway Board as contained in the letter dated 31.10.2014. Challenge was also laid to a consequential circular issued by the appellant No.5 (Original respondent No.7) dated 27.11.2014.

4. We may indicate, at the outset, that in the appeal the controversy centres around the payment of stipend to respondent Nos.1 to 26 (in short, "private respondents"), and those who are similarly placed in terms of the impugned communication dated 31.10.2014.

4.1. Importantly, the challenge to the revised fee structure was given up by respondent Nos.1 to 26 before the learned single Judge.

5. Briefly the facts, in the back ground of which the writ action came to be filed before the learned single Judge, is noticed hereafter.

5.1. The private respondents were given admittance qua academic year 2016-2017, in respect of Super-Speciality and Broad Speciality Courses, in the hospitals, attached to the Southern Railway Head Quarters. As a matter of fact, except one private respondent i.e., respondent No.25, all others were admitted to the Broad Speciality Course.

6. It appears at the point in time, when they were admitted to their respective postgraduate courses, via a mechanism set up under the aegis of NBE, the impugned communication dated 31.10.2014 was in operation. As per the said communication, the stipend, which was to be paid to the aforementioned respondents and those similar circumstanced was configured in line with NBE circular dated 26.12.2013.

7. This led to the private respondents approaching the learned single Judge by way of a writ petition under Article 226 of the Constitution. It appears that prior to the institution of the aforementioned writ petition, another writ petition, being: W.P.No.32383 of 2014 had also been filed in this court. In the said writ petition, an interim order was passed by the learned single judge, on 17.02.2015. The learned single judge while passing the interim order, made the following observations:

"..... 2.The petitioners are pursuing their Diploma of the National Board in the Railway Headquarters Hospital, Chennai. The petitioners have filed this writ petition to forbear the respondents 3 to 7 from revising the stipend which have been paid to them hitherto. According to the petitioners, the first year Board Speciality, Super Speciality and Post Diploma students have been paid all along Rs.63,654/- as monthly stipend for the first year, Rs.65,521/- for the second year and Rs.68,446/-for the third year. This stipend sought to be drastically reduced to Rs.25,000/- for the first year, Rs.27,000/- for the second year and Rs.29,000/- for the third year and for DNB Super Speciality Trainees, Rs.32,000/- for the first year, Rs.34,000/- for the second year and Rs.38,000/- for the third year. Further it is submitted that the tuition fees has been drastically increased from Rs.20,000/- to Rs.80,000/- and the Railway Administration is not justified in drastically reducing the stipend.

3.Learned counsel appearing for the 2nd respondent National Board, on instructions submitted that a notification has been issued by the National Board dated 26.12.2013 and clause 3.2 fixes basic stipend for the three years of training period at Rs.25,000/-, Rs.27,000/- and Rs.29,000/- respectively and no upper limit has been fixed by the National Board.

4.The Counter affidavit filed by the 7th respondent is of little assistance to this Court. The issue raised in this writ petition has not been answered in the counter affidavit. The counter affidavit does not state as to on what basis the respondents have proposed to revise the stipend hitherto to be paid to the trainee doctors, that too, in the middle of their training.

5.In such circumstances, the Railway Administration has to necessarily file a better counter affidavit and the 2nd respondent/National Board, also to file a counter affidavit. In the meantime, the stipend which has been hitherto paid to the petitioners shall continue to be paid and the same shall not be reduced and such payment shall be subject to the further orders to be passed in this writ petition."

8. The distinguishing features, if it can be labeled as one, which was sought to be projected by the counsel for the appellant, Mr.Ramkumar, was that the petitioners, who are parties to W.P.No.32383 of 2014 were admitted for academic year 2014-2015, when, impugned communication dated 31.10.2014 was not in operation. Thus, at the time of their admittance as trainees, they were, in effect, as noticed in the order dated 17.02.2015, paid a higher stipend which was reduced by virtue of the impugned communication dated 31.10.2014 issued by the Railway Board. The common factor between the writ petition, out of which the present appeal arises and W.P.No.32383 of 2014, is that, both relate to Railway Board Circular dated 31.10.2014.

8.1. However, as indicated above, one set of petitioners, who formed part of W.P.No.32383 of 2014 were admitted to their respective courses and were required to undergo training prior to the issuance of impugned communication dated 31.10.2014, while others, like the respondent No.26 herein, were admitted to their respective courses and required to undergo training after issuance of the communication dated 31.10.2014. Pertinently, the difference between two set of writ petitioners is only this and nothing more.

9. Continuing with the narrative, the learned single judge upon having the pleadings completed, based on the stand taken before him, inter alia, by NBE returned the following findings:

(i) that the stipend stipulated in the NBE circular dated 26.12.2013, was the minimum stipend;

(ii) and that most of the other regions of the railways were paying stipend much more than that which was sought to be paid by the appellants herein (i.e., Southern Railway Head Quarters Hospital).

9.1. Based on these two principal findings, the learned single judge allowed the writ petition.

10. Mr.Ramkumar, who appears for the appellant, raises two principal grounds for laying a challenge to the impugned judgement. First, that the private respondents, i.e., the original writ petitioners, had not laid a challenge to NBE circular dated 26.12.2013. In other words, all that the Railway Board did, via the impugned communication dated 31.10.2014, was to fall in line with the NBE's own circular dated 26.12.2013.

11. Second, that there has been no reduction in the stipend as was the case, which prevailed in relation to the petitioners, who are parties to W.P.No.32383 of 2014. The argument being that at the time of admittance, the private respondents and those similarly circumstanced were aware as to the rate at which they would be paid stipend.

12. Mr.V.Selvaraj, learned Senior Counsel, who appears for the private respondents, i.e., the original writ petitioners, argues in line with the reasoning articulated in the impugned judgement.

12.1. The learned counsel who appears for respondent No.27 says, that the said respondent does not have any grievance qua the impugned judgement. In so far as, respondent No.28, i.e., NBE is concerned, Mr.Muthusamy, takes the same stand, which was articulated before the learned single judge.

13. Having heard the learned counsel for the parties and perused the records, according to us, no interference is called for with the impugned judgment for the following reasons.

13.1. In so far as the first submission made by Mr.Ramkumar is concerned, that is, stated to be rejected for the reason that, the stand taken by NBE vis-a-vis its circular dated 26.12.2013, is that, it stipulated only the minimum stipend, which was to be paid to the trainee doctors. If that is the stand taken by NBE, certainly, the appellants cannot claim that, because they had to fall in line with the circular dated 26.12.2013, they reduced the stipend, vide the impugned communication dated 31.10.2014. It is an accepted fact as reflected in the order dated 17.02.2015, passed in W.P.No.32383 of 2014 that the stipend paid by the appellants was much higher. We do not intend to repeat the figures indicated in the order dated 17.02.2015, as the relevant part of that order has already been extracted herein above by us.

13.2. That takes us to the second ground, which is, at that time, when the private respondents and those similar circumstanced were admitted the rate of stipend in force was one which was reflected in the impugned communication dated

31.10.2014. As noticed herein above, the argument is that there was no reduction in stipend; in contrast to the circumstance which obtained in W.P.No.32383 of 2014. In our view, this argument is completely fallacious for the reason that the learned single judge granted relief to the private respondents on the principal ground that there was disparity in stipend paid by Railways to its trainee doctors engaged in different regions for no reasonable cause. That the disparity in stipend is stark, is apparent from a bare perusal of the following extract, which is an annexure issued by the Medical Director, Railway Hospital, Perambur:

Name of the Railway Zones running DNB Course	DNB Training Fee (Per year)	Stipend details (per month)		
		I year	II Year	III year
Central Railway	80,000/-	29,760+ DA	30,550+ DA	31340+D A
Western Railway	80,000/-	67,623	68,657	69,670
South Central Railway	70,000/-	65,363	67,324	69,347
Southern Eastern Railway	40,000/-	5 + HRA 66,26		
Eastern Railway	70,000/-	76,115	87,128	89,168
Northern Railway	70,000/- without accommodation	72,371	74,332	76,355
	80,000/- with accommodation			
Southern Railway	45000/- without accommodation	Broad speciality	Broad speciality	Broad speciality
	55,000/- with accommodation	25,000 Super speciality	27,000 Super speciality	25,000 Super speciality
		32,000	34,000	36,000

14. A perusal of the aforementioned extract would show that all other regions are paying stipend at a rate much higher than the stipend stipulated in the impugned communication dated 31.10.2014.

15. Mr. Ramkumar, at this stage, intervenes to say that the aforementioned extract was filed at the say so of the learned single judge. According to us, this fact would hardly make any difference to the conclusion that we have reached in the present matter as along as the data given therein is not disputed. The private respondents, as an instrumentality of the state, and hence, are bound to disclose, whether or not the Court calls upon them, all information, which is relevant

to the facts of the case. As a matter of fact, this information ought to have been disclosed by the appellants even without the say so of the learned single Judge.

16. Therefore, having regard to the aforesaid, we are of the view that no interference is called for with the impugned judgement, as alluded to above. The appellants, as a model employer, cannot create a situation, whereby disparity is caused amongst its trainee doctors employed in different regions with regard to payment of stipend, albeit, without reasonable cause. No distinguishing factors have been brought to fore by the appellants .

17. Accordingly, the appeal is dismissed. Consequently, the connected pending application will stand closed. The parties will, however, bear their own costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Secretary to Government,
Union of India,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan, New Delhi.
2. The Director,
National Board of Examinations,
(Ministry of Health and Family Welfare
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NAMS Building, Ansari Nagar,
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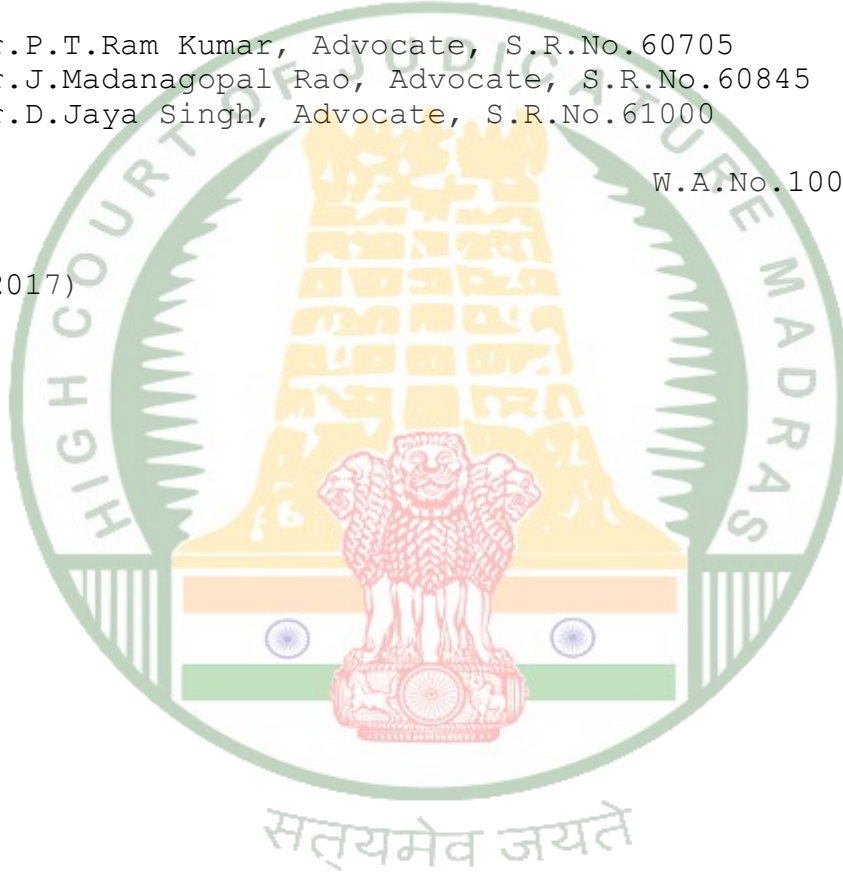
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And DNB Co-ordinator,
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Chennai - 600 023.

+1cc to Mr.P.T.Ram Kumar, Advocate, S.R.No.60705
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.60845
+1cc to Mr.D.Jaya Singh, Advocate, S.R.No.61000

W.A.No.1000 of 2017

VD(CO)
CA(05/10/2017)



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