

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.3079 of 2017 and
W.M.P.No.3000/2017

1. Mekala Rathan
 2. Amalan Singh
 3. S.Karthik
 4. Santhosh Balaji
- Petitioners

...

Versus

1. The Union of India
rep. by the Secretary to Government,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi.
2. 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.
3. The Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
4. The Deputy Director (Health),
Railway Board,
Raj Bhavan, New Delhi.
5. The Chief Medical Director,
Southern Railway,
Moore Market Complex,

Chennai-3.

6. The Medical Director,
Southern Railway Head Quarters Hospital,
Aynavaram, Perambur, Chennai-23.
7. The Additional Chief Health Director
& DNB Coordinator,
Southern Railway Head Quarters Hospital,
Aynavaram, Perambur, Chennai-23. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, forbearing the respondents 3 to 7 from reducing the stipend payable to the DNB (Diploma of National Board) students on the basis of the proceedings of the 4th respondent dated 31.10.2014 and pay monthly stipends to DNB students, Rs.63,654/- for the first year, Rs.65,521/- for the second year and Rs.68,446/- for the third year.

For Petitioners : Mr.V.Selvaraj
For Respondents : Mr.J.Madanagopal Rao, CGSC for R1
Mr.Dhruva for M/s.Anand, Samy &
Dhruva for R2
Mr.P.T.Ramkumar for R3 to R7

ORDER

The Writ Petition has been filed seeking to issue a Writ of Mandamus, forbearing the respondents 3 to 7 from reducing the stipend payable to the DNB (Diploma of National Board) students on the basis of the proceedings of the 4th respondent dated 31.10.2014 and pay monthly stipends to DNB students, Rs.63,654/- for the first year, Rs.65,521/- for the second year and Rs.68,446/- for the third year.

2. The case of the petitioners is as follows:

(a) The petitioners 1 and 2 have passed MBBS whereas the petitioners 3 and 4 have passed MBBS and D-Ortho and all of them have joined the Southern Railway Headquarters Hospital, Perambur to undergo three years Broad Specialty Course in Orthopedics pursuant to the Centralized All India Entrance Examinations conducted by the National Board of Examinations. They have joined the Course during August-September, 2016. The petitioners 1 and 2 were paid a stipend of Rs.25,000/- whereas the petitioners 3 and 4 were Rs.27,000/-.

(b) While so, on 31.10.2014, a communication had been sent to the Railway Hospital and other authorities stating that the competent authority in the Ministry of Railways decided to adopt the modified fee and stipend guidelines for DNB Trainees, mutatis mutandis for the trainees engaged in Indian Railway Medical Setup and also annexed the proceedings of the National Board of Examinations dated 26.12.2013 which prescribes the maximum permissible limit of fee structure. It also states that accredited institutions are at liberty to charge fees which is less than the fees indicated under the respective categories and the fee cannot be higher than the amount fixed by the National Board of Examinations.

(c) The first year Broad Specialty, Super Specialty 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. In the event of the revised norms being implemented, the first year Trainees are eligible for Rs.25,000/- p.m. second year students Rs.27,000/- and the third year students Rs.29,000/-. The DNB Super Specialty Trainees are eligible to get Rs.32,000/- in the first year, Rs.34,000/- in the second year and Rs.38,000/- in the third year.

(d) Except the Southern Railway Headquarters Hospital, Aynavaram, all the other Railway Hospitals have not reduced the stipend payable to the students, which alone attempted to increase the fee structure and reduce the stipend payable to the students admitted to super specialty and DNB Broad Specialty Courses. Aggrieved over the same, a Writ Petition in W.P.No.32383/2014 came to be filed by the students who were admitted to the courses during 2014-15 and this Court by way of an interim order, directed the respondents 5 to 7 not to reduce the stipend payable to the students admitted till 2014-15.

(e) The students, who were admitted to the DNB Broad Specialty Course during 2015-2016, filed W.P.No.26615/2016 seeking 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 per the letter of the 4th respondent dated 31.10.2014 and the consequential circular issued by the 7th respondent dated 27.11.2014 and the same was allowed by this Court by order dated 09.03.2016 stating that the attempt on the part of the respondents to reduce the stipend amount to the petitioners who are trainees in the Railway Hospital would amount to discrimination. Hence the present Writ Petition.

3. A detailed counter has been filed by the 2nd respondent in which it is stated that the Ministry of Health and Family Welfare, Government of India established the National Board of Examinations in 1975 which became an independent autonomous organization in 1982. It was set up to evolve uniform standards of Post-Graduate and Post-Doctoral Examinations in Medical Sciences on par with international standards.

4. The 2nd respondent conducts the Diplomate of National Board (DNB) and other examinations on all India Basis. The DNB qualification is internationally recognized. Besides, the DNB Examination leading to award of DNB qualification is equated with the Post-Doctoral Degrees given by Indian Universities. It also conducts the DNB and other examinations at its headquarters and other centres on all India Basis.

5. The selected candidates during the course are entitled to a minimum monthly stipend from the institution in which they enroll to study and serve. It depends upon the policy decision dated 08.05.2006 to DNB Trainees which was upheld by the High Court, Delhi in **Jaipur Golden Hospital v. NBE in W.P.(C) 1741/2007 dated 20.03.2007**. In accordance with the notice dated 26.12.2013, minimum stipend is payable to the DNB Trainees. It may be construed that capable institutions as required are at liberty to pay any monies over and above the minimum monies earmarked in Sub-Clause 3.2 of the Policy Notice dated 26.12.2013. Further, it is clarified that the notice dated 26.12.2013 was valid with immediate effect from the date of publication and superceded all previous notices, communications etc. including those mentioned in the respective Information Bulletins.

6. So far as this case is concerned, this respondents is arrayed only as a formal party and no relief is sought for as against him. According to this respondent, so far as the payment of stipend is concerned, it is reiterated that this answering respondent has not prescribed or issued any such guidelines or direction that would enable the respondent Nos.3 to 7 to reduce the stipend payable to the registered DNB candidates and if any hospital has done so without any valid and cogent reasons, that act on the part of the hospital for reduction in stipend is not supported by this respondent.

7. Heard the learned Counsel for the petitioner, learned Central Government Standing Counsel appearing for the 1st respondent, the learned Counsel appearing on behalf of the 2nd respondent and the learned Counsel appearing on behalf of the respondents 3 to 7.

8. It is seen from the above facts that the only grievance of the petitioners, who are Doctors are paid the stipend, which is now sought to be revised by the 4th respondent based on the circular dated 31.10.2014 and the consequential circular issued by the 7th respondent dated 27.11.2014. The circular dated 31.10.2014 is

issued by the 4th respondent according to which the competent authority in the Ministry of Railways has decided to adopt the modified fee and stipend guidelines for DNB Trainees, mutatis mutandis for the trainees engaged in Indian Railway Medical Set up. Pursuant to the said circular, another circular was issued by the 7th respondent dated 24.11.2014 which states that the Railway Board has modified the requisite annual fees payable by the DNB candidates w.e.f. 01.11.2014 as Rs.80,000/-. Though there is no serious objection by the petitioners with respect to the fixation of the fees, the challenge is only to the modification to the stipend payable.

9. According to the petitioners, they are all qualified doctors undergoing courses presently as trainees. The Government of India, Ministry of Health and Family Welfare has been prescribing the emoluments for the junior and the senior residents in all the Central Government Institutions and Hospitals. The respondent-Railways is also adopting a Residency Scheme approved by the Ministry of Health and Family Welfare. The petitioners being fullfledged Doctors, are rendering their services 24 x 7. While doing their residency, they all work towards obtaining Specialized/Super Specialized Qualification, namely, DNB which is equivalent to the Post Graduate Medical Course like MD/MS.

Therefore, the payment made is salary for rendering the full salary as doctors and not stipend. While so, when the other Railway Hospitals are not reduced the stipend payable to the students, the 6th and 7th respondents alone have attempting to reduce the stipend and increase the fee structure.

10. The Second Respondent, who is a National Board of Examinations, has filed a counter affidavit.

11. The learned Counsel appearing for the 2nd respondent contended that these candidates are selected through the Centralized Examination and given the DNB Training. The DNB training is equivalent to the MS and MD Post Graduate Diploma Courses offered to the candidates who are selected through National Entrance-cum-Eligibility Test (NEET-PG). The selected candidates under the Centralized Entrance Test for DNB are entitled to a minimum monthly compensation/stipend from the institution in which they enrolled to study and serve. The minimum stipend payable as such is as per the policy decision and it is upheld by several High Courts. No doubt, based on the policy decision, the stipend payable is being revised at specific intervals. As stated earlier, the stipend payable is a basic minimum amount earmarked and by no means, this should be construed as a upper limit

and reduced the same. It is interesting to know that there is no upper limit fixed for the payment of stipend to these DNB trainees. It depends upon the capacity of the institutions to pay any amount over and above the minimum sum earmarked in Sub-Clause 3.2 of the Policy Notice dated 26.12.2013.

12. It is stated in the counter affidavit of the 2nd respondent that Sub-clause 2.8 of the Proceedings dated 26.12.2013 specifically enforces the ceiling limit on the money chargeable by the institutions as fees for the conduct of the Post Diploma Courses. It is the consistent stand of the 2nd respondent that the payment of the petitioners is justified and that the stipend/compensation should not be reduced as the responsibilities undertaken entails considerable application of mind by the petitioners for the contribution to the society. While the petitioners are DNB trainees, they are also discharging their duties, which are laborious in nature. It is stated that these petitioners are working hard around the clock in addition to the training given. Therefore, it is suggested by the 2nd respondent that any reduction in the stipend payable is considered a direct onslaught and on the credibility and the importance given to the Super Specialty Course undertaken by the petitioners.

13. The 6th respondent who has filed counter affidavit on behalf of the respondents 3 to 5 and 7 has not pointed out that the proposed reduction on stipend/compensation is based on any guideline or direction which would enable them to do so. If the hospital in which the petitioners are employed is doing any such revision in the payment of stipend, the same cannot be supported by the other respondents. It is stated that the stipend is now being paid to the DNB Trainees by the Chief Personnel Officer, Chennai, based on the orders issued by the Railway Board vide letter No.2006/H/2-1/5 dated 31.10.2014. It is further stated that the Medical Department has got no role to pay in the reduction of the stipend. When the respondents 3 to 7 have not produced any acceptable materials to show that they have the powers either to reduce the stipend or reduce the stipend than what was originally fixed, the same cannot be implemented.

14. The learned Counsel for the respondents 3 to 7 produced a comparative chart showing the different Railway Zones giving DNB Training and the fees and stipend prescribed therein. Even a cursory look at the same would go to show that these stipends payable by Western Railway and South Central Railway, South Eastern Railway and Northern Railway are almost two or three times more than the stipend payable by the Southern Railway

which is now under challenge. It is also seen that the training fees is relatively less when compared to the other Railway Zones.

15. At this juncture, it is relevant to state that an affidavit is filed on behalf of the petitioners dated 07.06.2017. Though as per the prayer in the Writ Petition, the challenge is with respect to the order passed on 27.11.2014 by the 7th respondent which has modified the annual fees from 01.11.2014, in the said affidavit, the said challenge is given up. The Undertaking as given in para 4 of the affidavit is as follows:

"4. I submit that as far as fees payable is concerned, the Railway Hospitals are free to fix the fees on their own. The order dated 17.02.2015 passed in W.P.No.32383/2014 and the order dated 09.03.2016 in W.P.No.26615/2015 also concern only stipend payable to the students and has nothing to do with the payment of fees. We undertake to pay the fees that may be fixed by the Railway Hospital and we are not challenging the power of the Railway Hospital to fix the fees."

16. In view of the said undertaking, the fee that may be reduced pursuant to the Circular of the 7th respondent dated 24.11.2014 goes. Therefore, even going by the Comparison Chart as produced by the Counsel for the respondents 3 to 7, the attempt

on the part of the respondents to reduce the stipend amount to the petitioners who are trainees in the Southern Railway Headquarters, Aynavaram, Perambur, Chennai-23 would amount to discrimination. When the 2nd respondent has prescribed the nature of the duty and the training undertaken by these petitioners, the stipend is deemed to be only a salary and hence, the same should not be reduced. When the similarly placed trainees in other hospitals are receiving the stipend without any reduction, the attempt to reduce the stipend payable to these petitioners is arbitrary and not justified. In these circumstances, this Court is of the opinion that the submissions made by the Counsel for the parties, which are supported by the contentions of the 2nd respondent, have to be accepted.

17. Accordingly, the Writ Petition is allowed as prayed for in terms of the Circular dated 24.11.2014. No costs. Consequently, connected Miscellaneous Petition is closed.

21.06.2017

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To

1. The Secretary to Government,
Union of India,

Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi.

PUSHPA SATHYANARAYANA, J.

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2. The Director,
National Board of Examinations
(Ministry of Health and Family Welfare,
Government of India),
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Ansari Nagar,
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