

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.3138 of 2017

Dr.M.Shalini

... Petitioner

vs.

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 Directorate of Medical Education,
Kilpauk, Chennai 600 010.
4. The Dean cum Special Officer,
Government Medical College at
Block 'B' of Omandurar Estate,
Chennai 600 002.
5. The Dean,
Coimbatore Medical College,
Coimbatore.

... Respondents

Writ Petition 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 attend the Centralized Merit Based Counselling to be conducted by the National Board of Examination for admission to Super Special Course at Dwarka Office, New Delhi, based on the merit list of the Diplomate of National Board Common Entrance Test - Super speciality 2017 admission session ranking the petitioner with merit position 251* so as to enable the petitioner to pursue her Superspeciality course.

For Petitioner : Dr.R.Gouri

For Respondents : Mr.V.Anandhamoorthy,
Additional Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to respondents 1 to 4 to hand over all her Original Certificates retained by the 4th respondent, to enable her attend the Centralized Merit Based Counselling to be conducted by National Board of Examination for admission to Super Special Course at Dwarka Office, New Delhi.

2. According to the petitioner, she studied in Vinayaka Mission Medical College, Salem and passed M.B.B.S. Degree in 2008. She pursued her PG Degree at Coimbatore Medical College, Coimbatore in State Quota under Non-service category and completed M.D. (General Medicine) during the year 2016 under Tamil Nadu Dr. MGR Medical University. She was temporarily appointed as Assistant Surgeon under Category II of Class I of Tamil Nadu Medical Service for Non-service Post Graduate bond period of two years by the proceedings of the Director of Public Health and Preventive Medicine, dated 18.07.2016. Followed by the Posting Order issued by the Directorate of Medical Education, Chennai, dated 25.07.2016, the petitioner was posted to the Institution as Junior Resident of General Medicine, Government Medical College at Block 'B' of Omandurar Estate, Chennai. During the appointment, the original Certificates of 10th Mark Sheet, 12th Mark Sheet, MBBS Convocation, Medical Registration Certificate for MBBS and MD, Provisional Certificate of the Post-Graduation M.D. (General Medicine), Community Certificate, Physical Fitness Certificate were handed over by the petitioner to the 4th respondent.

3. Thereafter, the petitioner applied for higher studies/super speciality course through Common Entrance Test, appeared for the examination and secured 93 marks and her name appeared in the merit list with the merit position 251. Since it is mandatory condition to produce all the original testimonies/certificates/documents at the time of Centralized Merit Based Counselling to be held shortly, the petitioner approached the respondents 1 to 4 and requested in writing to return all the original Certificates, which were given by her at the time of joining the service. In reply, the 4th respondent, by a communication, dated 27.01.2017 informed that unless instructions are received from the higher authority, he cannot return the original Certificates. Left with no other alternative remedy, the petitioner is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Today, learned counsel for the petitioner submitted that the matter is squarely covered by the order dated

21.04.2015 passed by this Court in W.P.No.11796 of 2015, wherein, this Court had disposed of the said Writ Petition with a direction to the 4th respondent therein/Deputy Director of Health Services, Villupuram to return the original certificates/testimonials collected from the petitioner therein. For better understanding, relevant portion of the said order is extracted hereunder:

'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 speciality 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 speciality courses under the guise of enforcing the bond conditions. The petitioners are entitled to appear for Entrance Examinations for super speciality 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 speciality 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 speciality course. If not it is open to the respondents to recover the bond amount with proportionate interest.''

6. In view of the ratio laid down in the said decision and also taking note of the fact that the petitioner pursued her PG Degree in State Quota, and that she has been selected for the Centralized Merit Based Counselling to Super Speciality Course to be conducted shortly by the National Board of Examination, this Court directs the 4th respondent herein to return the original Certificates/testimonials collected from the petitioner at the time of joining the services as Assistant Surgeon.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.3060 of 2017 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

aeb

To:

- सत्यमेव जयते
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 Directorate of Medical Education, Kilpauk, Chennai 600 010.
 4. The Dean cum Special Officer, Government Medical College at Block 'B' of Omandurar Estate, Chennai 600 002.

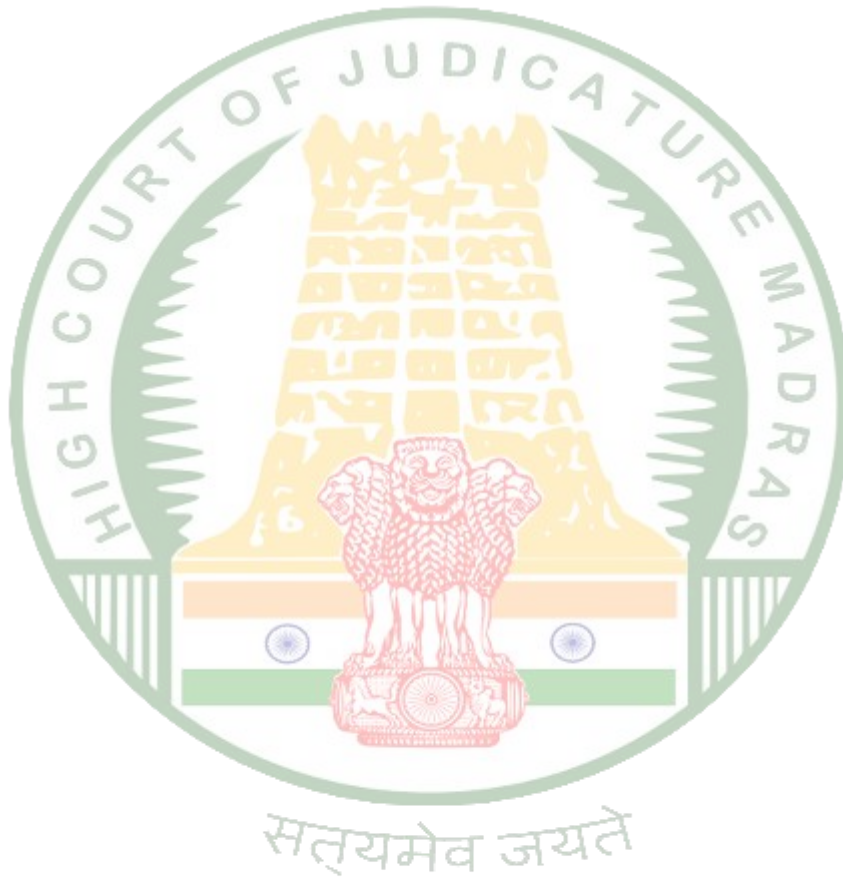
5. The Dean, Coimbatore Medical College, Coimbatore.

+1cc to M/s.R.Gouri, Advocate sr.8015

+1cc to Government Pleader sr.8295

Order in
W.P.No.3138 of 2017

pk(co)
ss(9/2/2017)



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