

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.05.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11490 of 2017

and W.M.P.No.12458 of 2017

Dr.Major.D.Karthik

... Petitioner

Vs

1. The Director of Public Health and Preventive Medicine,
No.359, Anna Salai, DMS Complex,
Teynampet, Chennai-6.
2. The Deputy Director of Health Services,
Office of the Deputy Director of Health Services,
Tiruvannamalai.
3. The Director General,
Office of the Director General,
Armed Forces Medical Services,
(DG-ID) Ministry of Defence,
M-Block, New Delhi-110 001.
4. The Commandant,
Indian Institute of Naval Medicine,
INHS, Asvini,
Mumbai-400 005.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to relieve the petitioner from the post of Assistant Surgeon, at Primary Health Centre, Vanapuram, Thiruvannamalai District and to issue the relieving order forthwith, so as to enable the petitioner to join his Post Graduate in Anaesthesia Course at 4th respondent College.

For Petitioner : Mr.Dr.R.Gouri

For RR1 & 2 : Mr.A.Zakkir Hussain
Government Advocate

O R D E R

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

2. The petitioner would state that he has completed his M.B.B.S degree at Tamil Nadu Dr.M.G.R.Medical University, Chennai in the year 2008 and the decree certificate was issued by the Tamil Nadu Dr.MGR Medical University bearing Registration No.52025239, dated 10.11.2009.

3. It is further stated by the petitioner that he has served in Indian Army for a period of five years on contractual basis as Army Doctor with the designation of captain from 3.9.2009 to 3.9.2014 and after completion of five years, he was relieved from the Army on 03.09.2014 with the rank Major.

4. The petitioner, after his release from service, was appointed as Assistant Surgeon by the first respondent in his proceedings R.No.6064/E5/A3/2015-40, dated 26.08.2015 and posted at Primary Health Centre, Vanapuram, Thiruvannamalai District. The petitioner joined duty as Assistant Surgeon on 07.09.2015 at Primary Health Centre, Vanapuram, Thiruvannamalai District and handed over all the original certificates. While in service, the petitioner applied for All India Post Graduate Common Entrance Exam (NEET) for Post Graduate Course 2017.

5. In the meantime, the petitioner applied for his Post Graduate Course and got admission for Post Graduate Course in the subject of Anaesthesia at the fourth respondent College through the examination conducted by the Medical Recruitment Board and an allotment order dated issued on 28.04.2017 to him and he was directed to report before the fourth respondent on 05.05.2017 along with originals. The petitioner, when he applied for passport, he has received all the original certificates from the second respondent. The petitioner need only a relieving order from the first respondent, so that he will report to the fourth respondent College for admission to the P.G.Course.

6. The petitioner has filed this Writ Petition, praying for relieve the petitioner from the post of Assistant Surgeon, at Primary Health Centre, Vanapuram, Thiruvannamalai District and to issue the relieving order forthwith, so as to enable the petitioner to join his Post Graduate in Anaesthesia Course at 4th respondent College.

7. The learned counsel appearing for the petitioner has

invited the attention of this Court to the order dated 12.12.2015 made in W.P.No.7153 of 2015 and M.P.No.1 of 2015 and would submit that the petitioner need only a relieving order from the first respondent, so as to enable him to report before the fourth respondent.

8. Mr.A.Zakkir Hussain, learned Government Advocate, has accepted notice for respondents 1 and 2 and would submit that the petitioner had received all the original certificates from the second respondent while applying passport and now he prays for relieving order only from the first respondent.

9. This Court has carefully considered the rival submissions. It is not in serious dispute that the petitioner, after passing out M.B.B.S. Degree, has served in Army Medical Corps for a period of five years as Army Doctor with the designation of Captain from 3.9.2009 to 3.9.2014 and he has also got admission under Army Ex-serviceman Quota by passing All India Entrance Examination for Post Graduate Course 2017 (AIPGMEE-2017) and vide communication dated 28.04.2017, issued by the Office of the Director General, Armed Forces Medical Services (DG-1D), New Delhi-110 001 and was called upon to submit documents/photograph enumerated in the Information Bulletin.

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

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

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

28. Thus, the respondents cannot deny the petitioners' right to apply for higher studies/super specialty courses under the guise of enforcing the bond conditions. The petitioners are entitled to appear for Entrance Examinations for super specialty course, which are conducted by the Government/any University/Deemed Universities and if they are selected, the respondents are bound to relieve the petitioners even if they are in temporary service as per the bond, after getting an Undertaking from the petitioners that they should serve the remaining period of bond, if not, it is well open to the respondents to collect the bond amount as mentioned in the bond with proportionate interest. On any account no PG Degree/Diploma Holder can be prevented by the respondents to pursue their higher studies and improve their knowledge of specialisation. Thus the said issue is answered against the respondents on the above terms.

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

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

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

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

[4] No PG Degree/Diploma Holder, who completed their course or joined in Government service

temporarily as per the bond, shall be denied of opportunity of applying super specialty course and if they are selected, they should be permitted to undergo the course subject to the condition that remaining period of service shall be served in the Government Institutions by the concerned persons after the completion of their respective super specialty course. If not it is open to the respondents to recover the bond amount with proportionate interest.

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

[6]Connected MPs are closed.#

14. In the result, the Writ Petition is allowed and the first and second respondents are directed to issue relieving order in favour of the petitioner forthwith. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Director of Public Health and Preventive Medicine,
No.359, Anna Salai, DMS Complex,
Teynampet, Chennai-6.
2. The Deputy Director of Health Services,
Office of the Deputy Director of Health Services,
Tiruvannamalai.
3. The Director General, Office of the Director General,
Armed Forces Medical Services, (DG-ID) Ministry of Defence,
M-Block, New Delhi-110 001.
4. The Commandant,
Indian Institute of Naval Medicine,
INHS, Asvini, Mumbai-400 005.

+lcc to Dr.R.Gowri, Advocate, S.R.No.37284

+lcc to the Government Pleader, S.R.No.37342

W.P.No.11490 of 2017

VSN(CO)

RS(16/05/2017)