

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.30947 of 2015

P.Beula Bell Ninja

.. Petitioner

vs

1. The Registrar,
Tamil Nadu Nursing Council,
Chennai-4.
2. The College of Nursing,
Christian Medical College and Hospital,
Vellore, Vellore District

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to return the original Transfer Certificate, Conduct Certificate, Medical Experience Certificate and Transcript Certificate within a stipulated period that may be fixed by this Court.

For Petitioner : Mr.G.Rajkumar
for Mr.S.Ramasamy
Law Associates

For Respondent-1 : No Appearance

For Respondent-2 : Mr.Krishna Srinivasan for
M/s.S.Ramasubramaniam and
Associates

O R D E R

The petitioner has filed this Writ Petition seeking to issue a Writ of Mandamus, directing the second respondent to return the original Transfer Certificate, Conduct Certificate, Medical Experience Certificate and Transcript Certificate within a stipulated period, by considering her representation dated 31.08.2015.

2. The petitioner, after completing her 12th standard in the year 2001, had applied for the Diploma Course in General Nursing and Midwifery in the second respondent-College and she

was also admitted for the said Course during the period 2003-2006. The petitioner has also successfully completed her three year degree Course in the year 2006, by securing good marks in aggregate of 75.13%. As per the College Rules, she had to undergo one year internship and thereafter two years Bond Training. It is further stated that she had completed her Internship Training during 2006-2007 and Bond Training during 2007-2009 without any blemishes. It is contended that after completion of training courses, when the petitioner approached the second respondent for return of the original certificates, the second respondent, while returning the other certificates, has not issued the original Transfer Certificate, Conduct Certificate, Medical Experience Certificate and Transcript Certificate. It is stated that without the above said certificates, the petitioner is unable to take up any Government Job, despite the fact that she has completed her Diploma Course. The petitioner also claims to have passed the Medical Recruitment Board Examination conducted on 28.06.2015. As she was not possessed of the original certificates, she was unable to attend the certificate verification. Therefore, a representation was sent on 11.08.2015, followed by a reminder on 31.08.2015. As no response was forthcoming, the petitioner has approached this Court seeking the above said direction.

3.1 The second respondent, who is the College, has filed a Counter Affidavit through the Dean, College of Nursing. It is stated the second respondent-College is run by a Society registered under the Societies Registration Act and is governed by its own bye-laws. Therefore, strictly speaking, the second respondent being a private institution, the maintainability of the Writ Petition is challenged.

3.2. The demand of the petitioner for return of the original Transfer Certificate, Conduct Certificate, Medical Experience Certificate and Transcript Certificate is unsustainable, as there is no obligation on the part of the second respondent to issue the same to the petitioner. It is further stated in the counter affidavit that the said certificates are institutional certificates which have been retained by the institution, as the petitioner had failed to complete the sponsorship obligation undertaken by her.

3.3. Further, it is stated in the counter affidavit that in the year 1946, they have started B.Sc Nursing Course affiliated to the Madras University and in the year 1969, M.Sc Nursing programme was instituted. The second respondent-Institution has been affiliated to the Tamil Nadu Dr.M.G.R.Medical University since 1988. It is also stated that the College had 90 seats in the Diploma Course in General Nursing and Midwifery of which 85% were reserved for sponsored candidates. The idea behind

reserving 85% of the seats for the sponsored category is that the respondent-College has been offering subsidized education in the spirit of Christ primarily for service, recognizing the moral and spiritual basis of life in relation to health. Thus, out of the total number of seats available, the second respondent reserves for candidates sponsored by certain bodies of Christian Organizations. The candidates sponsored by sponsoring bodies enjoy certain privilege at the time of admission, which are not available to the open category candidates. In return for such privileges, the said candidates are expected to serve the cause for poor and needy by serving the Sponsoring body in its hospitals and or the respondent or one of its hospital for a stipulated period of time agreed upon by them at the time of admission.

3.4. It is further stated that the petitioner at the time of her admission undertook to serve in areas of need after successful completion of the programme. This undertaking given by way of a bond, Sponsorship Obligation Agreement, by which, the petitioner agreed to faithfully discharge the duties, serve and perform the terms and conditions of such employment inclusive of professional services in Hospital or other institutions as directed by the Sponsorship Body for a period of two years. It is also stated in the agreement that in the event of failure to undertake such obligation, as stipulated in the Sponsorship Obligation Agreement, the student would forfeit her right to claim any certificates other than those that are awarded to the student as per the regulations of the Board of Nursing Education, Nurses League, South India Branch, CMAI and the Tamil Nadu Nurses and Midwives Council. The petitioner also had signed in the agreement and her parent stood as a Guarantor for her completion of Sponsorship obligations, in terms of the Agreement. The petitioner was well aware of this commitment to serve in any area of need for a period of two years even before the admission in the Institution.

4. Heard Mr.G.Rajkumar, learned counsel, who is appearing on behalf of M/s.S.Ramasamy Law Associates, learned counsel for the petitioner and Mr.Krishna Srinivasan, learned counsel, who is appearing for M/s.S.Ramasubramaniam and Associates, learned counsel for the second respondent and perused the materials available on record.

5. Admittedly, the petitioner had completed her course in the year 2006 and thereafter the mandatory internship between 06.07.2006 to 05.07.2007. The petitioner was then required to serve in areas of need as per the Sponsorship Obligation Agreement for a period of two years. The petitioner also undertook her service obligation from the year 2007 onwards. However, the petitioner had abandoned her service from

05.02.2009 (i.e) five months prior to the completion of the Obligation Agreement. When the petitioner requested for her certificates, the Institution had issued all the statutory certificates and only the institutional certificates such as Transfer Certificate, Conduct and Course Completion Certificate and Transcript certificates have been withheld. This has been done in line with the rules framed by the Institution and also as per the prospectus.

6. It is admitted that the petitioner was a sponsored candidate. She has also entered into a contract on 20.06.2003, wherein, it is agreed that she would bind herself to serve in a hospital or other Institution as directed by the Dean, College of Nursing in such capacity as may be required for a period of not less than two years. Immediately after successful completion of her B.Sc. Degree /Diploma in Nursing Course and internship in consideration of the contract to be executed by her in favour of the College, which was granted to her admission as a sponsored candidate subject to the terms and conditions, which are as follows:

"Now the above written obligation is conditioned to be void if I shall duly and faithfully in all respects whatsoever observe and perform the undertakings on my part set forth in the said agreement and shall accept employment in which the sponsoring body or the Christian Medical College may be desirous of offering me upon the terms stimulated in that behalf of the successful completion of the Course and Internship and shall well and faithfully discharge the duties and observe and perform the terms and conditions of such employment inclusive of professional conduct for a period of not less than two years or the period agreed upon with the sponsoring body. But in the event of my failing at any time to observe my said undertaking or to accept such employment as aforesaid or to discharge well and faithfully the duties or to observe and perform the terms and conditions of such employment inclusive of professional conduct due to any extra-ordinary circumstances the above written contract shall remain in full or such reduced force and effect and to such extent as may be appropriate to the period which may elapse before such failure shall occur, that is to say, if such failure shall occur"

a. To the extend of the full sum hereby secured viz.Rs.20,000/- Rs.15,000/- Diploma

Nursing to College of Nursing for being sponsored, and cost of Nursing Education to Christian Medical College which is not less than Rs.91,000/- (Rupees ninety one thousand only) per year of training plus any Scholarship money paid by the College with interest to be paid to the College if no service whatsoever as per the term of this contract has been rendered."

7. There is also yet another agreement between the student and the College executed on the same date, in which, as per Clause 5, "the Student undertakes not to claim her / his transcripts and other certificates from the College after the successful completion of her / his course until he / she has fulfilled her/his service obligations or paid the amount secured in the contract in lieu thereof in terms of this agreement and the contract".

8. Admittedly, the petitioner had left the Institution on 05.02.2009 without fulfilling the remaining sponsorship obligation. In fact, the petitioner in her letter dated 10.11.2014, had sought for return of the certificates stating that because of her family constraints, she could not complete the balance 5 months of Bond Obligations and admitted that she had left the Institution on 05.02.2009. The respondent-College seems to have returned all the original certificates, namely,

- (i) S.S.L.C Mark Sheet
- (ii) H.S.C Mark Sheet, Transfer Certificate
- (iii) Conduct Certificate
- (iv) Original DGNM Certificate
- (v) DGNM Mark List
- (vi) TNNC Registration Certificate for Nurse
- (vii) TNNC Registration Certificate for midwife.

All the above original certificates were received by the petitioner on 10.11.2014. Only the Transcript Certificate, Transfer Certificate, Course Completion Certificate and the Conduct Certificate, which are Institutional ones have not been given to the petitioner, as she had not completed the bond period.

9. The specific stand of the second respondent-College is that without completion of the bond period, the College is not obligated to issue the above said certificates to the petitioner. In this regard, the respondent-College has placed the reliance on a decision of this Hon'ble Court dated 29.08.1997 in W.P.No.3773 of 1997 [Dr.Corinne Sundar Rao vs. Christian Medical College and Others], wherein, in para 11, it has been held as follows:-

"11.....It is clear that even though petitioner agreed to serve a hospital for 24 months, she did not serve in any hospital for the term and she served only for 11 months. She got married and left India. Having committed a breach of the obligation, she cannot seek equitable jurisdiction at the hands of this Court. That apart, first respondent has also said that it is given to the petitioner all the Certificates required to be furnished, as per the University Regulations, and in regard to the relief sought for in this writ petition, there is no agreement by it. I do not find there is any merit in this Writ Petition."

10. The second respondent has also placed yet another decision rendered by this Court in W.A.No.1479 of 1997 in [John vs. State of Tamil Nadu, Rep by Health Department], wherein it is held that "Hon'ble Single Judge after observing the conduct of the appellant with respect to his taking education, entering into an agreement with the sponsoring authority to serve in the rural areas, etc and not disclosing the fact that the requisite certificate required under the statute having already been issued, dismissed the Writ Petition inter alia holding that there is no statutory or customary duty cast on the respondents to issue any such credential certificate".

11. In the light of the above facts and also in the light of the above decisions stated supra, the petitioner has bounden duty to serve the subsidiaries, as per the agreement, which was admittedly violated. As stated earlier, the second respondent-College has got no obligation to issue those certificates demanded by the petitioner, that too, after six years of leaving the Institution.

12. For the reasons stated above, the Writ Petition deserves to be dismissed. Accordingly, Writ Petition is dismissed. No costs. सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srn

To

1. The Registrar,
Tamil Nadu Nursing Council,
Chennai-4.
2. The College of Nursing,
Christian Medical College and Hospital,
Vellore, Vellore District.

+1cc to Mr.S. Ramasubramani, Associates, Sr. 26175

+1cc to Mr.S. Ramasamy Law Associates Sr. 26040

W.P.No.30947 of 2015

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