

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.26274 of 2016 and
W.M.P.No.22528/2016

1. P.Barath Kumar Singh
2. S.Subashini
3. Ajoy Kumar Deka
4. Karthikha
5. Sandip Kumar Buha
6. Aparna Gaini
7. G.Shobana
8. Siva Shankar N
9. Asha, R
- 10.Nagakeerthi
- 11.Jagadish Laxmansa Katwa
- 12.Sunil C
- 13.P.G.Vijaykarthik
- 14.Vidya Sagar Uppala
- 15.Arun Pragadish Ram R.M.
- 16.Rahul Garke
- 17.Jithin P S
- 18.E.Nithin Siromony
- 19.Madhuvanthi Rajendran
- 20.Sudahar R
- 21.Shanima R
- 22.Ananth Prasad
- 23.Vidya Sagar Madhavaram
- 24.Hari Krishna
- 25.Shah Sirrif Vinod
- 26.Divya

... 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 Chariman,
Railway Board,
Rail Bhavan, New Delhi.
 4. The Deputy Director (Health),
Railway Board,
Rail 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
and DNB Coordinator,
Southern Railway Headquarters 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 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 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 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.

2. The case of the petitioners is as follows:

(a) The National Board conducts Centralized Entrance Tests for admission to Super-Specialty and Broad Specialty Courses and the selected candidates are allotted to the Teaching Hospitals for undergoing the courses and after the completion of the course, examination is conducted by the National Board and Diploma is awarded by the Board.

(b) The 25th petitioner is already a Post Graduate who was admitted during 2016-2017 to undergo Super Specialty Course in the Southern Railway Headquarters Hospital, Perambur. The other

petitioners have been admitted during 2016-2017 to undergo Broad Specialty DNB Courses in the Southern Railway Headquarters Hospital, Perambur. The petitioners are as such students undergoing Super Specialty or Broad Specialty Course in the Southern Railway Headquarters Hospital, Perambur, pursuant to the Centralized All India Entrance Examinations conducted by the National Board of Examinations. They have joined the Course during 2016-2017. The DNB Broad Specialty Course is equivalent to MD/MS.

(c) 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.

(d) 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 third year students Rs.29,000/-. 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.

(e) 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 students who were admitted to the courses during 2014-15 and this Court by way of interim order, directed the respondents 5 to 7 not to reduce the stipend payable to the students admitted till 2014-15.

(f) 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 consequent 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 respondent 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. A detailed counter affidavit has been filed by the 6th respondent stating that the writ petition is liable to be dismissed as there is no cause of action arises as against them. The 25th petitioner is already a Post Graduate admitted during January 2016 to undergo Super Specialty Course in the Southern Railway Headquarters Hospital, Perambur and the others are admitted to undergo Broad Special Courses in the Southern Railway Headquarters Hospital, Perambur during 2015 and 2016. Thus, the petitioners herein are students of DNB (Diploma of National Board) Course. DNB is a Post Graduate Course equivalent to MD/MS, approved by the Medical Council of India and admission to such courses in various hospitals all over the country is regulated by the National Board of Examinations (NBE). Southern Railway Headquarters Hospital, Ayanavaram is one of the hospitals accredited by the NBE for conducting DNB Courses in 9 different Specialties and Super Specialties, having a sanction of 69 students. Railway Hospitals in Northern, Eastern, South Eastern, Western,

Central and South Central Railway are also accredited for such DNB Courses. The candidates for such courses are selected and allotted by the NBE and Railway Ministry or Railway Board do not have any role in their selection.

8. The Railway Board has issued a Circular dated 31.10.2014 based on the guidelines issued by the National Board of Examinations under Notice dated 26.12.2013 regarding the fee and stipend guidelines of DNB and FNB Training. The competent authority in the Ministry of Railways has decided to adopt the modified fee and stipend guidelines for NBE trainee "mutatis Mutandis" for those trainees engaged in Indian Railway Medical set-up and in compliance with the letter dated 31.10.2014 issued by the Railway Board, the 7th respondent issued a Circular dated 24.11.2014 to implement the modified annual fee for respective DNB candidates in Railway Hospital, Perambur. The Railway Board under Letter No.2006/H/2-1/J dated 27.05.2015 have directed that the Zone may fix the chargeable amount as per expenses being incurred on various heads subject to the condition that fee of any one head should not exceed the laid down amount. Pursuant to this, Southern Railway Headquarters Hospital had formulated a committee to fix the fees which fixed the fees.

9. The petitioners are all Doctors and are undergoing the Courses as Trainees. The Government of India, Ministry of Health and Family Welfare have been prescribing emoluments for the Junior and Senior residents in all Central Government Institutions and Hospitals. Further, the petitioners 1 to 11 have no relationship as employees with the railways, but are only trainees who are undergoing training equivalent to a post-graduation course and hence, the petitioners 1 to 26 do not perform any duties as railway employees nor they are governed by any service conditions or the rules as applicable to the railway employees.

10. All Railway Hospitals are bound by the Letter No.2006/H/2-1/5 dated 31.10.2014 issued by the Railway Board. Hence, the authority to issue the stipend in Southern Railway, namely, Chief Personnel Officer, Southern Railway is only following the rules laid down by the Railway Board in this respect. Aggrieved over the same, 67 DNB Trainees of Railway Hospital filed writ petition in W.P.No.32383/2014, seeking restoration of their stipend to the previous stage, that is, before implementation of the above mentioned Railway Board's Letter dated 31.10.2014 and this Court has passed an interim order not reducing the stipend. The Writ Petition is still pending.

11. Another writ petition in W.P.No.26615/2015 came to be filed which was disposed of by this Court accepting the contentions urged on behalf of the petitioners and the Writ Appeal filed against the said writ petition is still pending and no interim order has been granted. Further, the petitioners in the earlier Writ Petition in W.P.No.32383/2014 were originally paid a higher stipend which was sought to be reduced in furtherance to the notification of the 3rd respondent dated 31.10.2014 whereas in the present case, right from the inception, petitioners are being paid only stipend as fixed under the circular by Railway Board dated 31.10.2014. Except the petitioners 11 to 14, 18 and 20, rest of the petitioners joined during the year 2016 in the Railway Hospital, Perambur. Hence the circular issued by the 7th respondent dated 24.11.2014 does not apply to these petitioners as the fee had modified from Rs.80,000/- to Rs.55,000/- as per Railway Board instruction, even before they joined the course. Hence, prays for dismissal of the Writ Petition.

12. 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.

13. 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.

14. 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.

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

16. 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 ear-marked and by no means, this should be construed as an 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.

17. 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.

18. 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.

19. 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.

20. 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."

21. In view of the said undertaking, the fee that may be reduced pursuant to the Circular of the 7th respondent dated 27.11.2014 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.

22. Accordingly, the Writ Petition is allowed as prayed for in terms of the Circular dated 27.11.2014. 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.
2. The Director,
National Board of Examinations
(Ministry of Health and Family Welfare,
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7. The Additional Chief Health Director
and DNB Coordinator,
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PUSHPA SATHYANARAYANA, J.

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