

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.30311 of 2018

and

W.M.P.Nos.35370, 35372 and 35374 of 2018

V.K.Vaishnavi

... Petitioner

Vs

1.M/s. State of Tamil Nadu
rep. by Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10.

3.The Director of Public Health and
Preventive Medicine,
Directorate of Public Health and
Preventive Medicine,
Egmore, Chennai-6.

4.The Dean,
Coimbatore Medical College,
Coimbatore.

5.The Registrar,
Tamil Nadu Dr. M.G.R. Medical
University, Guindy,
Chennai-25.

6.The President,
Medical Council of India,
Sector 8, Pocket 14,
Dwaraka-1, New Delhi-110 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.Ms.No.92, Health and Family Welfare Department, dated 29.02.2016, the Clause No.56(g) of the Post Graduate Degree/Diploma/M.D.S./5 year M.Ch. (Neuro Surgery) Courses in Tamil Nadu Government Medical/Dental Non-Governmental Self Financing and Government Aided Colleges Prospectus 2015 to

2018, the impugned order dated 03.08.2018 bearing R.No.59630/E5/A4/2018-DMS-374 passed by the 3rd respondent and the consequential Show Cause Notice bearing Ref.No.3709/ME1/2018 issued by the 4th respondent dated 25.10.2018 and quash the same and thereby forbear the respondents from in any manner enforcing the bond as against the petitioner which was obtained from the petitioner by the 4th respondent.

For Petitioner : Mr.L.Chandrakumar
for M/s.V.P.K.Gowtham

For Respondents: Mr.V.Kadhirvelu,
Spl. Govt. Pleader for R1 to 4
Mr.D.Ravichander,
Standing Counsel for R5
Mr.V.P.Raman,
Standing Counsel for R6

O R D E R

This Writ Petition has been filed by the petitioner, who was admitted in the 4th respondent Coimbatore Medical College, Coimbatore, for pursuing her Post Graduation in P.G. (M.S.Ophthalmology) in Non-service quota, namely, in the seats reserved for All India Quota and not as per the Prospectus issued by the respondents, particularly, Clause No.56(g) of the Post Graduate Degree/Diploma/M.D.S./5 year M.Ch. (Neuro Surgery) Courses in Tamil Nadu Government Medical/Dental Non-Governmental Self Financing and Government Aided Colleges Prospectus 2015 to 2018, challenging the Government Order in G.O.Ms.No.92, Health and Family Welfare Department, dated 29.02.2016 as well as the impugned order dated 03.08.2018 bearing R.No.59630/E5/A4/2018-DMS-374 passed by the 3rd respondent herein followed by the Show Cause Notice dated 25.10.2018 issued by the 4th respondent and to quash the same.

2. Learned Counsel appearing for the petitioner assailing the impugned order submitted that the petitioner was admitted in the Coimbatore Medical College for pursuing her Post Graduation only in the Non-Service Quota i.e. All India Quota Seats provided for admission to P.G. Degree/Diploma Courses and not as per the Prospectus issued by the respondents, particularly, Clause 56(g) and the Government Order issued in G.O.Ms.No.92, Health and Family Welfare Department dated 29.02.2016. But, ironically, she was forced to execute a bond while joining P.G. Degree Course to serve in the Government Institution for a period of two years, if the Government gives her posting, failing which, the petitioner was directed to pay a sum of Rs.40,00,000/- for not serving in the Government for the said period. As the petitioner is pursuing her Super Speciality Course as Fellow in General Ophthalmology and also received the

Allotment Order, she has requested the Dean, Coimbatore Medical College, Coimbatore, the 4th respondent herein, to return her original certificates. But the 4th respondent denied her request. Therefore, she was under compulsion to file W.P.No.23874/2018. In that Writ Petition, by order dated 01.10.2018, this Court directed the 5th respondent, namely, the Registrar, The Tamil Nadu Dr. M.G.R. Medical University, Guindy, Chennai, to return the Original Certificates. But till date, they have not complied with the order, for which the petitioner is also going to initiate a separate contempt proceedings. Adding further, the learned Counsel for the petitioner submitted that after taking steps for filing the present Writ Petition, the impugned order dated 03.08.2018 has been passed by the 3rd respondent, which was received by the petitioner belatedly in the 2nd week of August, 2018 thereby posting her in the Government Hospital, Nagapattinam District as compulsory posting as per the previous bond executed.

3. Taking support from a Common Order dated 12.12.2008 passed by this Court in a Batch of Writ Petitions in W.P.No.12923/2008 etc. batch, the learned Counsel for the petitioner submitted that after considering an identical issue, this Court has held that 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. The said order further says that even if any candidate executed bond, it will have no effect since they have not applied for admission under the impugned prospectus.

4. Again referring to the further direction issued by this Court in the said order, the learned Counsel for the petitioner submitted that 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. According to the learned Counsel for the petitioner, it has been completely overlooked by the 3rd respondent and since the petitioner is pursuing her Post Graduation in P.G. (M.S. Ophthalmology) in Non-service quota in the seats reserved for All India Quota and now she has also applied for Super Speciality Course as Fellow in General Ophthalmology and got selected, the impugned order ought not to have been issued against the petitioner.

5. Opposing the above prayer, a counter affidavit has been filed by the respondents 1, 2 and 4.

6. Learned Special Government Pleader appearing for the respondents 1 to 4 submitted that whether the P.G. Degree Holders who applied for their Degree/Diploma through All India Quota seats and admitted to Tamil Nadu Government Medical Colleges can be asked to execute a bond by the 3rd respondent has been clarified in a Communication dated 19.08.2016 issued by the Ministry of Health and Family Welfare, Government of India making it clear that the stipend/fee structure/course duration/bond amount/rendering of service in rural/tribal area/other conditonality's etc., if any, may vary from State to State, College to College and University to University and shall be as per the rules and regulations of the respective State/College/University concerned.

7. A perusal of the Communication dated 19.08.2016 issued by the Ministry of Health and Family Welfare, Government of India reveals that in the said communication, there is no reference to the order passed by this Court in W.P.No.12923/2008 and etc. batch dated 12.12.2008 wherein this Court while dealing with the similar issue as to whether the P.G. Degree Holders who applied for their Degree Course under All India Quota seats and admitted to Tamil Nadu Government Medical Colleges are bound by the terms and conditions issued by the respondents through their Prospectus has been answered. The relevant portion is extracted here under as follows:

'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 the completion of their course as the respondents have no jurisdiction to retain their certificates and the

respondents are directed to return all the certificates of the petitioners within two weeks from the date of the receipt of the 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 for 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 person 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.

(5) There will be no order as to costs.''

The impugned order dated 25.10.2018 shows that the petitioner has not reported for duty and joined the Tamil Nadu Medical Service and in order to fulfil the bond executed by her, she was directed to report before the Director of Medical Education to get posting in Tamil Nadu Medical Service or to pay the bond amount within 15 days from the day of receipt of the said notice. As the said notice is running contrary to the direction issued by this Court in W.P.No.12923/2008 etc. batch dated 12.12.2008, the same is liable to be quashed.

8. In the result, the Writ Petition is allowed and the impugned Show Cause Notice issued by the 3rd respondent dated 03.08.2018 followed by the Show Cause Notice dated 25.10.2018 issued by the 4th respondent are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary, State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10.
- 3.The Director of Public Health and
Preventive Medicine,
Directorate of Public Health and
Preventive Medicine, Egmore, Chennai-6.

4.The Dean,
Coimbatore Medical College, Coimbatore.

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Tamil Nadu Dr. M.G.R. Medical
University, Guindy, Chennai-25.

6.The President,
Medical Council of India,
Sector 8, Pocket 14, Dwaraka-1,
New Delhi-110 007.

+1 CC to Mr.V.P.K. Gowtham, Advocate sr 84396.

+1 CC to Govt. Pleader sr 87077.

+1 CC to M/s.D. Ravichander, Advocate sr 84331.

+1 CC to Mr.V.P.Raman, Advocate sr 84261.

W.P.No.30311 of 2018

KJ(CO)
SP(23/01/2019)



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