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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 16.08.2018
Delivered on : 06.09.2018
CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.15265 of 2017
and
W.M.P (MD) .No.15902 of 2017

J.Praveen : Petitioner

Vs.

1.The Director of Medical Education,
Kilpauk,
Chennai-600 010.

2.The Director-Academics,
Aravind Eye Hospital,
No.1, Anna Nagar,
Madurai-20.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the second respondent herein to hand over the original certificates entrusted by the petitioner to the second respondent herein as per the letter of the second respondent dated 09.07.2014 and the provisional certificate issued by the Tamil Nadu Dr.M.G.R.Medical University for passing MS(Ophthalmology) by the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.R.Vijayakumar

For R-1 : Mr.A.Muthukaruppan
Additional Government Pleader

For R-2 : Mr.Isaac Mohanlal
Senior Counsel for Isaac Chamber

ORDER

The petitioner seeks for a direction to the second respondent herein to hand over the original certificates entrusted by him to the second respondent herein as per the letter of the second respondent dated 09.07.2014 and the provisional certificate issued by the Tamil Nadu Dr.M.G.R.Medical University for passing MS (Ophthalmology) by him within a time frame fixed by this Court.

2.The brief facts necessitating the filing of the present writ petition are stated hereunder:-

The petitioner had obtained MBBS Degree in 2011. Thereafter, he had applied for post of graduate course, namely, MS (Ophthalmology) in the State of Tamil Nadu to the first respondent in 2014. The selection committee of the first respondent had eventually issued an allotment order for studying the above said course for the academic year 2014-15 on 06.07.2014. The Tamil Nadu Dr.M.G.R Medical University, Chennai, issued eligibility certificate on 07.07.2014. As per allotment order of the first respondent, the petitioner was allotted MS (Ophthalmology) in the second respondent Institution under the non-service self financing Government quota. The Post Graduate Course is for a period of three years commencing from the academic year 2014-17. At the time, the petitioner was admitted in the second respondent Institution, the petitioner had submitted eight original certificates to the second respondent Institution and also executed a bond to the effect that he would serve the second respondent Institution for a period of two years, after completion of the Post Graduate Course and in default, he would pay a sum of Rs.20,00,000/- to the second respondent Institution. The petitioner had successfully completed MS (Ophthalmology) course in 2017 and results were also published by the Tamil Nadu Dr.M.G.R. Medical University. The petitioner's provisional certificate has also been forwarded by the University to the second respondent Institution in the last week of July, 2017. Since the petitioner had completed the course successfully in July 2017, he requested the second respondent to hand over all the eight original certificates submitted by him at the time of his admission to the course in 2017. However, it appears that the certificates were not returned to the petitioner. In this regard, the petitioner had also submitted a representation on 29.07.2017 to the second respondent. In response to the representation dated 29.07.2017, the second respondent has given a reply on 17.08.2017, stating that the petitioner had signed an agreement at the time when he was admitted to the course in the second respondent Institution. Therefore, the petitioner is before this Court seeking issuance of Writ of Mandamus, directing the second respondent Institution to return the original certificates submitted by the petitioner.

3.Mr.R.Vijayakumar, learned counsel appearing for the petitioner at the outset, would submit that when the bond was executed by the petitioner, he was under bone fide impression that he was required to serve only in the Government service and not in the second respondent Institution. According to the learned counsel, the petitioner was willing to serve in the Government and not in the second respondent Institution. As regards the payment of bond amount of Rs.20,00,000/- is concerned, the learned counsel for the petitioner would submit that it is always open to the second respondent Institution to resort to proper legal remedy to recover the bond amount from the petitioner, but at the same time, the original certificates of the petitioner cannot be withheld by the second respondent in order to recover the bond amount from the



petitioner or compel the petitioner to work in the second respondent Institution for a period of two years. Such agreement providing the condition to serve in the second respondent Institution for two years and in default, damages of Rs.20,00,000/- payable was unreasonable and also cannot be enforced in law.

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4.Per contra, Mr.Isaac Mohanlal, learned Senior Counsel appearing for the second respondent Institution would submit that the petitioner at the time of admission to the Post Graduate Course in 2014, had executed a bond by giving a clear undertaking to serve the second respondent Institution for a period of two years. According to the learned Senior Counsel, the clauses contained in the prospectus are very clear that the petitioner with eyes wide open, conscious of the implication, had signed the bond in order to gain admission in the second respondent Institution.

5.According to the learned Senior Counsel, the second respondent Institution is one of the most reputed Institutions internationally in eye care and the petitioner having used the Institution for his academic pursuit and obtained Post Graduate degree, cannot be allowed to turn around and contend that he was under no obligation to abide by the terms of agreement/bond. The learned Senior Counsel would draw the attention of this Court to the prospectus issued by the second respondent Institution, wherein, it is clearly mentioned as follows:-

"Undertaking for MS (Ophthalmology) Course :

As per the similar guidelines of the Directorate of Medical Education, Government of Tamil Nadu, selected candidates on admission to MS postgraduate course should execute a bond for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) undertaking that they shall work at Aravind Eye Care System for a period of not less than 2 years after the completion of their course. During this work internship, the candidates may be deployed to any of the satellite hospitals. This arrangement strengthens the commitment of the institute to reach out to the poor in the community."

6.In pursuance of the above clause contained in the prospectus, an agreement was also entered into, which provided the condition, which is the bone of contention between the parties and the said condition is as follows:-

"WHEREAS the first party has admitted the first person of the second party in the PG course.

Degree in Ophthalmology in their Institution and also is spending for the course for the benefit of the poor people with the object that the PG students after completion of the course should be useful to the poor people and fulfil the objects and in consideration of the same, the first person of the second party has agreed to serve in any of the Units of Aravind Eye Hospital of the first party for a period of 2 years on successful



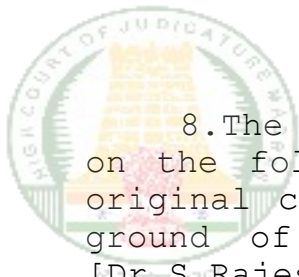
completion of the course and also agree that the party will complete the full course and will not leave in the middle of the course causing hardship to the Institution as well as depriving the chance of another student. However, the Party of the First Part is at liberty to relieve the selected candidate earlier for reasons to their satisfaction and in their sole discretion. In the event of any breach of the above agreement by the first person of the second party (i.e., failure to serve in Aravind Eye Hospital & Postgraduate Institution of Ophthalmology, the second party shall pay a sum of Rs.20,00,000/- (Twenty Laksh) only, to the first party as compensation and damages for the willful default and breach of agreement on the part of the second party and for the expenses met out and other facilities provided by the first party.

In witness whereof, the parties hereto have hereunto set and subscribe their hands and seals on the day, month and year first above written."

7.The learned Senior Counsel would further draw the attention of this Court to the prospectus issued by the first respondent, wherein, under clause 53(c), it is stated as follows:-

"53...(c) Stipend /Fee structure / Bond amount / any other conditions will be as per the Institution admitted into."

Therefore, he would further submit that it is too naïve on the part of the petitioner to contend before this Court that he was under the impression, he was required to serve the Government and not the Institution, in which he studied and obtained Post Graduate Degree. Once the petitioner had given conscious undertaking to serve the Institution for a period of two years and having given such undertaking without any compulsion, the petitioner cannot be allowed to resile from that undertaking and cannot be allowed to walk away with all the original certificates. In order to further bolster his argument, the learned Senior Counsel would submit that the petitioner did not lose anything while undergoing the PG course in the second respondent Institution. The total fees paid to the Institution for the completion of the course was only Rs.6,00,000/-. Whereas, by way of monthly stipend for all the three years, the petitioner had been paid Rs.9,36,000/-, which amount is far the above amount, which he had actually spent towards tuition and special fees on the second respondent Institution. He would further add that in the event of the petitioner complying with the service bond, the second respondent would be paying him Rs.65,000/- per month for first year and Rs.70,000/- per month for second year and therefore, there cannot be any legitimate grievance on the part of the petitioner of losing any remuneration during the period of bond service. The Institution, which had bestowed upon the petitioner the super special technological facilities in eye care and the petitioner having benefited from such expertise cannot take a stand against the very institution.



8. The learned counsel appearing for the petitioner would rely on the following decisions in respect of his contention that the original certificates cannot be withheld by the Institution on the ground of non completion of service bond. (2009)1 MLJ 1103 [Dr.S.Rajesh vs. State of Tamil Nadu].

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9. In the above said decision, the learned Judge had held that the condition not to return the original certificates of the candidates till the completion of the bond period was held to be illegal and invalid. However, in the same Judgment, the learned Judge has also held as follows:-

"Thus it is beyond doubt that the prospectus is the rule of selection, which is binding on the parties. Thus, the students admitted under the Non-Service Quota other than All India Quota are bound to comply with the conditions contained in the prospectus and the bond executed, that they shall serve for 3 years, failing which they have to remit a sum of Rs.2/Rs.3 lakhs respectively to the respondents. The challenge made by the petitioners, who were selected under the State Quota are rejected."

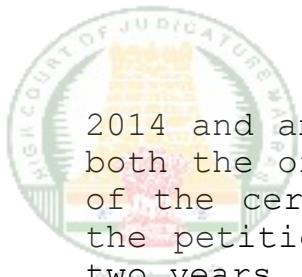
10. In (2011)8 MLJ 454 [Kesavan vs. Director of Medical Education, Kilpauk, Chennai], the learned Single Judge of this Court had held in paragraph 10 as follows:-

"10. On a perusal of documents, it is seen that the respondents have not signed in the agreement/bond that was executed by the petitioner. The arrangement is thus an invalid one. Therefore, the same could not be enforced against the petitioner. Furthermore, as rightly contended by the learned counsel for the petitioner, there is no clause in the bond that the respondents could retain the certificates, until the payment is made. For not paying the amount, they could take at the most take recovery proceedings against the petitioner based on the bond."

11. According to the learned single Judge, there is no clause in the bond that the respondent will retain the certificates until the payment is made.

12. The learned counsel would submit that in this case also, there is no such clause and therefore, retention of the certificates by the second respondent is illegal.

13. In 2013(1) CTC 595 [S.Muthukamatchi vs. The Director of Technical Education, Anna University], the learned single Judge of this Court has held that the College has no authority to retain the certificate when students leave the course midterm. The learned Judge has observed that the certificates are not fixed deposit on which, banks can claim general lien and they are actually the properties of the students. The learned counsel relied on two unreported judgments one dated 20.06.2014 made in W.P.No.14593 of



2014 and another dated 04.10.2016 made in W.P.No.31181 of 2016. In both the orders, the learned Judge of this Court had ordered return of the certificates after getting an affidavit of undertaking from the petitioner that they will serve in Tamil Nadu for a period of two years.

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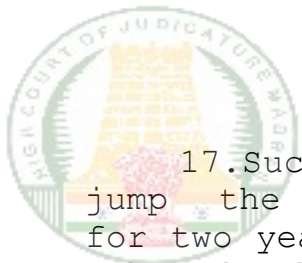
14.The learned counsel appearing for the petitioner would submit that the conduct of the second respondent is also discriminatory, since for some of the Doctors, who had completed PG course along with the petitioner, the second respondent returned certificates to them although they had executed bond, on their successful completion of their course. Therefore, he would submit that the second respondent Institution cannot legally withhold the certificates in the absence of any specific clause of withholding of such certificates, in default of complying with the undertaking given by the petitioner.

15.The learned Senior Counsel appearing for the second respondent would rely on an unreported decision of this Court passed in W.P.Nos.16854 to 16860 of 2011 dated 25.07.2011 and he drew the attention of this Court from paragraphs 19 and 20, which are extracted hereunder:-

"19.It must be held that the conditions of the bond executed by them neither suffers from any arbitrariness nor it was done due to any unequal bargaining power. On the contrary, the petitioners are qualified and trained medical doctors and have undergone. P.G Medical courses. Therefore, it cannot be said that they have signed it with an unequal bargaining power. This is especially so when there are thousands of candidates standing in queue for direct selection to PG courses and the petitioners had the advantage of being selected. If they had to resile from the terms of the bond relating to compulsory service, there is no other option to pay the quantified damages as agreed to by them in the bond.

20.This court is not inclined to go into the quantum of quantified damages and the term stipulated do not indicate that it was either arbitrary or fixed on any fancy basis. Even at the time of admission to the PG course, the petitioner were award of such condition in the prospectus stipulated in respect of the Government hospitals. The present term is more or less similar to the conditions stipulated by the State Government in respect of its employees."

16.According to the learned Senior Counsel, the validity of such condition has been upheld by this Court and also in the two decisions relied on by the learned counsel for the petitioner himself and the learned Judge has only ordered return of the certificates after getting an affidavit of undertaking from those petitioners therein, to serve in Tamil Nadu for a period of three years.



17. Such is the position, it is not open to the petitioner to jump the conditions of bond, refusing to serve in the Institution for two years and also refusing to make good bond amount and on the other hand, demand the original certificates submitted him. As regards his contention that some of the Doctors were given certificates, the learned Senior Counsel would submit that those Doctors were all service Doctors and they would not require to serve in the second respondent Institution, therefore, their certificates have been returned immediately on their completion of the course. The petitioner being a non-service candidate, cannot compare himself to the service candidate. Therefore, the learned Senior Counsel would submit that the writ petition is lacking bona fide and the same is liable to be rejected.

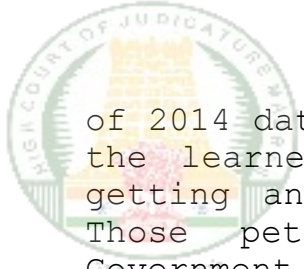
18. The learned Additional Government Pleader made his submission on behalf of the first respondent.

19. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent, the learned Senior Counsel appearing for the second respondent and perused the materials and pleadings placed on records.

20. From the materials as disclosed, it is very clear that at the time when the petitioner was admitted in the course in the second respondent institution in 2014, he had consciously executed a bond that he will work for a period of two years in the second respondent institution and pay Rs.20,00,000/- in case of non compliance. When such undertaking has been given by the petitioner in order to gain admission in the second respondent Institution, it is unfair and improper on the part of the petitioner to turn around and resile his promise to serve the Institution or pay Rs.20,00,000/- as quantified. It looks that the petitioner wants to have cake and eat it too and wants to have best of both worlds.

21. As rightly contended by the learned Senior Counsel, the petitioner having benefited from the expertise of the second respondent Institution, he cannot on completion of the Course, find fault with the insistence by the second respondent Institution for compliance of the agreement signed by the petitioner.

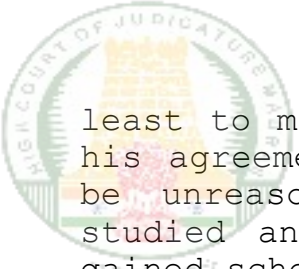
22. As rightly held by the learned single Judge of this Court in W.P.Nos.16854 to 16860 of 2011 dated 25.07.2011 that the petitioner being a qualified Doctor, agreement signed by him cannot be termed to be an unequal bargaining power between the petitioner and the second respondent. Moreover, when thousands of candidates were waiting in queue for selection to the P.G. course and the petitioner had the advantage of being selected to the said course on the basis of the undertaking, he cannot be allowed to escape from such undertaking consciously given by the petitioner. In fact, the two orders relied on by the petitioner, which unreported (W.P.No.14593



of 2014 dated 20.06.2014 and W.P.No.31181 of 2016 dated 04.10.2016), the learned Judge ordered return of the certificates only after getting an affidavit of undertaking from the petitioner therein. Those petitioners were the candidates admitted against the Government quota. Further, the prospectus issued by the first respondent would clearly disclose that the petitioner is bound by the bond executed in terms of the private institution, in which, the candidates are admitted. Clause 53 of the prospectus issued by the first respondent is very clear on that aspect and therefore, the contention of the petitioner is that he was under the impression that he was required to serve only in Government service does not carry conviction and hence, does not merit even iota of acceptance.

23.As regards the decision relied on by the learned counsel for the petitioner, the Court has recognized the validity of such condition imposed on the candidates at the time of admission and also quantification of the damages on violation of the condition. Although a learned Judge of this Court has held in that judgment cited on behalf of the petitioner reported in 2011(8) MLJ 454 (cited supra) that for not paying the bond amount, the institution can always take recovery proceedings against the person concerned, the said decision was on the basis of the fact that the agreement was not signed and the same was held to be invalid. As regards the other decision relied on by the learned counsel for the petitioner reported in 2013(1) CTC 595 (cited supra), that was the case where the students had to leave midterm and their certificates were withheld and only based on such conduct, the learned Judge has made certain observations. The ratio laid down by the Court cannot be applied to the factual matrix of the present case, for the simple reason that the petitioner herein being a qualified Doctor consciously executed a bond and the only effective way such bond can be executed by the second respondent Institution is to make the petitioner to serve for the agreed period of two years or at least make the petitioner to pay the quantified damages for going back on his undertaking.

24.During the course of the arguments, this Court ascertained from the counsel for the petitioner, whether the petitioner was willing to make good the amount towards the quantified damages as mentioned in the bond. But on instruction, the learned counsel for the petitioner submitted that the petitioner was not inclined to make any payment towards quantified damages. This Court is unable to appreciate the conduct of the petitioner, as the petitioner appears to be rather self centred and not willing to stand by his commitment. The petitioner having benefited from the second respondent Institution while pursuing his Post Graduate course, cannot turn around and resist the legitimate demand of the second respondent Institution on certain hyper-technicalities. Since from the materials as produced and made available for consideration before this Court, this Court cannot come to any other conclusion except to hold that the petitioner is contractually bound to serve the second respondent Institution for a period of two years or at



least to make good the quantified damages of Rs.20,00,000/- as per his agreement. Therefore, the conduct of the petitioner appears to be unreasonable and disloyal towards the institution where he studied and obtained his post graduation and thereby immediately gained scholarship in the field of its specialization.

25. In the above said circumstances, this Court does not find any merits in the writ petition and therefore, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Director of Medical Education,
Kilpauk,
Chennai-600 010.

+1CC to M/s.ISSAC CHAMBERS, Advocate, SR.No. 83014
+1CC to Mr.R.VIJAYAKUMAR, Advocate, SR.No.82679

W.P.(MD)No.15265 of 2017
and
W.M.P(MD).NO.15902 of 2017
06.09.2018

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