

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.386 of 2012

Dr.Md.Niamathulla Hussain,
Assistant Lecturer,
Government Unani Medical College,
Chennai.

.. Petitioner

Vs.

1. The State of Tamilnadu,
represented by the Secretary
to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai.
2. The Special Commissioner,
Department of Indian Medicine and
Homeopathy,
Chennai 600 106.
3. The Principal,
Government of Unani Medical College,
Chennai 600 106.

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the Special Commissioner Department of Indian Medicine and Homeopathy relating to his proceedings in Ref.No.9106/E1/2/06 dated 24.08.2006 as well as the records of the Health and Family Welfare Department relating to its proceedings in Reference No.54815/IM2-1/2009 dated 18.01.2011 and quashing the same and directing them to regularize the period from 14.01.2007 till to 12.11.2007 as duty period with full salary and to pay thereby the salary for 303 days.

For Petitioner : Mr.O.R.Abul Kalam

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition challenging the orders of the respondents 2 and 1 dated 24.08.2006 and 18.01.2011, made in Ref.No.9106/E1/2/06 and Reference No.54815/IM2-1/2009 respectively and for a direction to the respondents 2 and 1 to regularize the period of pursuing Post Graduate Course from 14.01.2007 to 12.11.2007 as duty period and to pay the salary for 303 days.

2.The petitioner is possessing Bachelor degree in Unani Medicine and Surgery. He was working as a Lecturer in the Government Unani Medical College, Chennai. The 2nd respondent sent a proposal to the 1st respondent for Post Graduate study with full pay under II Scheme 2004-05. As per the norms of the Central Council of the Indian Medicine and that of the Tamil Nadu Dr.M.G.R. Medical University, all basic medical sciences such as Anatomy, Physiology, Bio Chemistry, etc., teaching staffs are permitted to pursue the course, so that they could improve their skill by acquiring more knowledge and imparting their education to the students in the Medical College of Indian System of Medicine. The 1st respondent accepting the proposal of the 2nd respondent, issued G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.08.2004, permitting the Doctors to pursue Post Graduate course to acquire more knowledge to teach the students to enrich the education of the students in the Medical College. The 1st respondent also stated in the Government Order that Doctors pursuing the Post Graduate Course would be sanctioned study leave with full salary and during the course of studies, their post should not be filled up. The 2nd respondent circulated the G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.08.2004 to all the Doctors. The petitioner applied for the Post Graduate Course "M.Sc. Physiology" in Saveetha Institute of Medical and Technical Science (Deemed University) for the year 2006-07 and got selected. The petitioner informed his selection to the 2nd respondent through the 3rd respondent. The 2nd respondent by the proceedings dated 29.06.2006, taking note of the fact that the petitioner was selected to do Post Graduate Course, requested the 3rd respondent to relieve the petitioner to enable him to join Post Graduate Course on 06.07.2006 and inform the 2nd respondent the relieving date.

2(i) Based on the said proceedings of the 2nd respondent, the 3rd respondent, Principal of the Government Unani Medical College, Chennai by the proceedings dated 06.07.2006, relieved the petitioner. The petitioner joined the College and paid a sum of Rs.86,000/- to the College being the fees for 1st year and executed a bond undertaking to pay fees for each academic year 2007-2008 and 2008-2009, if he discontinues his studies. The 2nd

respondent by the proceedings in Ref.No.9106/E1/2/06 dated 24.08.2006 rejected the application of the petitioner to pursue the Post Graduate course on the ground that the benefits given in G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.08.2004 is not applicable to the petitioner stating that the students protested as there was shortage of teaching faculties in College and students made representation to the Government.

3.On receipt of the said proceedings, the petitioner by appeal dated 01.09.2006, addressed to the 1st respondent to reconsider his case sympathetically and issue an order to sanction study leave with full pay and allowances, but the 1st respondent did not pass any order. The petitioner filed W.P.No.9931 of 2007. This Court by the order dated 16.03.2007 directed the 1st respondent to dispose of the appeal within a period of eight weeks. The 2nd respondent by the letter dated 31.10.2007, informed the petitioner that the 1st respondent by proceedings dated 24.10.2007, rejected the request of the petitioner. The petitioner gave various representations to the respondents. The 1st respondent by letter No.54815/IM2-1/2009 dated 18.01.2011 informed the petitioner that his request is not feasible for compliance. Challenging the earlier proceedings of the 2nd respondent in Ref.No.9106/E1/2/05 dated 24.08.2006 and 1st respondent's proceedings in Ref.No.54815/IM2-1/2009 dated 18.01.2011 and seeking for a direction to regularize the period from 14.01.2007 to 12.11.2007 as duty period with full salary and allowances, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the respondents having permitted the petitioner to pursue his Post Graduate Course by relieving him and making him to pay huge amounts as fees, erred in holding later that the petitioner is not entitled to the benefits of G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.08.2004. The respondents having permitted the petitioner to join Post Graduate Course, erred in recalling the petitioner to join duty and treating the period of study between 14.01.2007 to 12.11.2007 as leave on loss of pay. By this act of the respondents, the petitioner's right to get gratuity and bonus are affected. The reason given by the respondents for holding that the petitioner is not entitled to the benefits of the said Government Order is not correct and prayed for allowing the Writ Petition as prayed for.

5.The respondents filed counter affidavit. Mr.R.S.Selvam, learned Government Advocate appearing for the respondents contended that the 3rd respondent was requested to relieve the petitioner to pursue the course in "M.Sc. Physiology" in

Saveetha Institute of Medical and Technical Science (Deemed University) without any commitments and without availing any provisions under G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.08.2004 and therefore, the provision of G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department is not applicable to the case of the petitioner. The 1st respondent by the letter No.53488/IM2(1)/2006-3, dated 24.10.2007 has stated that Standing Finance Committee has approved deputation of only two Doctors to the Post Graduate Course in a particular year and deputation of a 3rd Doctor is against the decision of the Standing Finance Committee and as such the deputation of the petitioner to study "M.Sc. Physiology" at Saveetha Institute of Medical and Technical Science (Deemed University) was not authorized by the competent authority. Due to protest of students on shortage of faculty members in Government Unani Medical College, Chennai, the 2nd respondent called back the petitioner to restore smooth functioning of the College. The 2nd respondent regularized the period of study availed by the petitioner as leave on loss of pay. The petitioner has not obtained prior permission of the 2nd respondent to pursue the course and therefore, he is not entitled for the relief sought for and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the 1st respondent has formulated a policy to depute the Doctors working in Unani Medical College, mostly in teaching post, to permit them to pursue Post Graduate Course so that they can acquire knowledge which in turn will benefit the students. As per the policy taken by the Government, the 1st respondent issued G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.09.2004. As per the G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.09.2004, the Doctor who obtains admission in private college to pursue Post Graduate Course is entitled to leave with full pay and allowances. As per the said Government Order, the petitioner applied for "M.Sc. Physiology" in Saveetha Institute of Medical and Technical Science (Deemed University) and got admission. The petitioner applied for permission to pursue the course in the said deemed University. The 2nd respondent by his proceedings dated 29.06.2006, requested the 3rd respondent to relieve the petitioner to enable him to join the course on 06.07.2006. Based on the said instructions of the 2nd respondent dated 29.06.2006, the 3rd respondent relieved the petitioner on 06.07.2006 and petitioner joined the course "M.Sc. Physiology" in Saveetha Institute of Medical and Technical Science (Deemed University) and paid necessary fees and executed bond with the said College

that if he discontinues the Course, he will pay the fees for next two years.

8. From a reading of the letter of the 2nd respondent dated 29.06.2006, it is seen that the 3rd respondent was requested to relieve the petitioner to enable him to join "M.Sc. Physiology" in Saveetha Institute of Medical and Technical Science (Deemed University) and there is nothing on record to show that the said instruction was given without any commitments or without availing provision under G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.09.2004. When the petitioner has sought permission to join "M.Sc. Physiology" course in Saveetha Institute of Medical and Technical Science (Deemed University) College with full pay and allowances as per the provisions of G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.09.2004, the 2nd respondent ought to have informed the 3rd respondent as well as the petitioner that he is not entitled to benefit conferred by the said G.O. and he was relieved without sanctioning the benefits in the said G.O. Having permitted the petitioner to join "M.Sc. Physiology" course and made him to pay fees for the 1st year and executing the bond to the effect that if he discontinues the course, he will pay the fees for the next two years, it is not open to the 2nd respondent subsequently to recall the petitioner in the middle of the course and reject his request to regularize the period of study as duty period with full pay and allowances.

9. In the counter affidavit, the respondents have stated that Standing Finance Committee has approved for deputation of only two Doctors to do Post Graduate Course in a particular year. The petitioner was not authorized by competent authority as he was the 3rd Doctor to be deputed to do Post Graduate Course. The respondents have not given such a reason in the impugned order, but has stated that due to shortage of teaching faculty in Government Unani Medical College, Chennai, the students of the College have protested against the College and made representation to the Government and hence, the respondents called back the petitioner from his studies to restore the smooth functioning of the College. The respondents having permitted the petitioner to join Post Graduate Course, recalling only for smooth functioning of the College and rejecting the petitioner's request to regularize the period from 14.01.2007 to 12.11.2007 as duty period with full pay and allowances is not correct. The order of the respondents regularizing the period of absence as leave on loss of pay is erroneous. Having made the petitioner to believe that he is entitled to benefits under G.O.Ms.No.295 [Health and Family Welfare (IMI (2)) Department dated 03.09.2004 and relieving him without any condition, the respondents are not justified in treating the period of study as leave on loss of pay. For the above reason, the petitioner is

entitled to the relief sought for in the Writ Petition.

10.In the result, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Secretary,
The State of Tamilnadu,
Health and Family Welfare Department,
Fort St. George,
Chennai.
2. The Special Commissioner,
Department of Indian Medicine and
Homeopathy,
Chennai 600 106.
3. The Principal,
Government of Unani Medical College,
Chennai 600 106.

+1cc to the Government Pleader, S.R.No.69708

W.P.No.386 of 2012

CS/10/10/2019

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