

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.02.2020

PRONOUNCED ON: 01.06.2020

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2377 of 2020
and
W.M.P. No. 2780 of 2020

Dr. G.Gowthaman

... Petitioner

-vs-

1. The Joint Director,
Medical & Rural Health Services,
Tiruppur District,
Tiruppur.
2. The Dean,
Coimbatore Medical College,
Coimbatore.
3. The Chief Resident Medical Officer,
Government Hospital,
Udumalpet.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent pertaining to his proceedings in Na.Ka. No. 3899/Ni/2019 dated 10.01.2020 and quash the same and consequently direct the Respondents 2 & 3 to return the petitioner's original certificates as found in the bonafide certificate dated 14.10.2019 issued by the 2nd Respondent.

For Petitioner : Mr. K.S.Karthik Raja

For Respondents: Mr. E.Manoharan
Special Government Pleader

O R D E R

Heard Mr. K.S.Karthik Raja, Learned Counsel for the Petitioner, Mr. E.Manoharan, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a medical practitioner, had undergone Post Graduation Degree course in M.D. (Physiology) during the academic years 2015-2019 and had executed a bond agreeing for compulsory service for not less than two years in the Government after completing that course or pay a compensation of Rs.40,00,000/- in lieu thereof, in terms of the prospectus issued in that regard. The Petitioner had joined duty on 11.12.2019 F.N. as Assistant Surgeon at Government Hospital, Udumalpet, Tiruppur District, after he was given posting order and his original certificates, which were in the custody of the Dean, Coimbatore Medical College, Coimbatore, have been sent to the place of posting viz., Chief Civil Surgeon, Government Hospital, Udumalpet, Tiruppur District by proceedings in Office Ref. No. 319/ME.1/2019 dated 07.01.2020. Since the Petitioner has been on unauthorized absence from 17.12.2019, the Third Respondent by proceedings in Na.Ka. No.3899/Ni/2019 dated 10.01.2020, called upon the Petitioner to report for duty, failing which it was informed that disciplinary proceedings would be taken against him, apart from resorting to the provisions of the Revenue Recovery Act, for recovering the amount under the compulsory bond.

3. While so, the Petitioner claims to have made a representation dated 09.01.2020 to the First Respondent requesting to return his original certificates as he intends to pursue higher studies in Ph.D. at Amrita University, Ettimadai, Coimbatore. On receipt of the aforesaid letter Na.Ka. No.3899/Ni/2019 dated 10.01.2020 from the Third Respondent, the Petitioner had sent a reply dated 13.01.2020 informing that as he was suffering from insomania for four days with depression, he was admitted at Vazhikatti Mental Health Centre and Research Institute on 17.12.2019 and as he has been under medication, he could not attend the hospital duties for two weeks. It is further stated that the Petitioner had to thereafter take care of his father, who had suffered a massive myocardial infarction on 31.12.2019 and could not attend to hospital duties. Moreover, he is going to join at Amrita University, Ettimadai, Coimbatore on 20.01.2020. In that backdrop, the Petitioner, claiming that he had not received any reply for his representation dated 09.01.2020 from the First Respondent, has filed this Writ Petition challenging the aforesaid order in Na.Ka. No. 3899/Ni/2019 dated 10.01.2020 issued by the Third Respondent and for consequential direction to the Second and Third Respondents to return his original certificates, which has been mentioned in the bonafide certificate dated 14.10.2019 issued by the Second Respondent.

4. The Respondents have filed their counter-affidavit dated 13.02.2020 resisting the claim made by the Petitioner in the Writ Petition by relying on the authoritative pronouncement

of the Hon'ble Supreme Court of India in Association of Medical Super Speciality Aspirants and Residents -vs- Union of India [(2019) 8 SCC 607] holding that the requirement of the various States in the Country that the candidates admitted to Post Graduate Speciality Courses in Medicine would have to execute compulsory bond to serve the Government for a specified period after the completion of the course or pay the amount fixed as compensation in lieu thereof, is legally valid and does not offend Articles 16, 19(1)(g), 21 and 23 of the Constitution, Section 14 of the Specific Relief Act, 1963, and Section 27 of the Indian Contract Act, 1872, apart from falling within the competence of the State Governments. It also assumes significance that the relief claimed therein for return of original documents of the candidates on completion of their courses of study had not been granted.

5. What is however sought to be canvassed by the Petitioner in this Writ Petition is that he is willing to serve the Government for the period agreed by him in the bond, but after completing his further studies, for which he has been now selected and has sought for return of his original documents, which are now in the custody of the Third Respondent. In that backdrop, during the hearing on 20.02.2020, the Learned Counsel for the Petitioner sought time to get instructions as to whether the Petitioner was agreeable to furnish a bank guarantee for the sum of Rs.40,00,000/-, so that it could be invoked in the event he fails to re-join duty after completing the further studies, and file an affidavit to that effect. However, when the matter was called on 24.02.2020, the Learned Counsel for the Petitioner, on instructions, stated that the Petitioner is not prepared to furnish such bank guarantee.

6. On a careful examination of the rival submissions made by the Learned Counsel for the parties, it is apparent that the certificates of the Petitioner, which relate to his eligibility and qualification, had been voluntarily handed over by him at the time of joining the course of study. It is common knowledge that such practice is prevalent in any educational institution to ensure that duly qualified persons are selected and that they did not leave the course midway without proper intimation. It is a condition in the prospectus for the course of study in which the Petitioner had joined that after its completion, he has to serve for a period of ten years in the employment of the State. Here again, as employer, the State is entitled by the prevailing practice to retain the certificates of the Petitioner to ensure that he possesses the prescribed qualification and does not abandon the employment without requisite sanction. As such, the Respondents are absolutely justified in retaining the original documents of the Petitioner till he performs his obligation of serving for the requisite period, failing which he

has to pay the liquidated damages stipulated for return of the same. Since the Petitioner does not want to comply with that obligation and is only eager to wriggle out of the same clandestinely, no fault can be found in the impugned order for taking legitimate action taken against the Petitioner in that regard.

7. In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

sj
To

1. The Joint Director,
Medical & Rural Health Services,
Tiruppur District,
Tiruppur.
2. The Dean,
Coimbatore Medical College,
Coimbatore.
3. The Chief Resident Medical Officer,
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W.P. No. 2377 of 2020

NRL (CO)
SP (05/06/2020)

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