

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2020

PRONOUNCED ON : 03.12.2020

CORAM

THE HONOURABLE THIRU JUSTICE V.PARTHIBAN

W.P.No.14247 of 2020

&

W.M.P.No.17723 of 2020

Dr.Sharmila Rajkumari

... Petitioner

Vs.

1.The Director of Public Health and Preventive Medicine,
Chennai-600006.

2.The Deputy Director of Health Services,
Health Services,
Thirupathur.

3.The Block Medical Officer,
Government Community Healthy Centre,
Vaduganthangal.

4.The Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi-110029.

5.The Registrar,
Christian Medical College,
Vellore.

...Respondents

Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents 1 to 3 herein and their subordinates to accept the Letter of Resignation dated 01.09.2020 and relieve the petitioner from the post of Assistant Surgeon, Government Primary Health Centre, Kanguppam, Tirupathur, Health Unit District which post she is holding temporarily under the respondents 1 to 3 herein on or before 25.09.2020 or within such time as may be prescribed by this Court and return back all the original certificates as SSLC, HSC, CRRI Completion Certificate, Degree Certificate to the petitioner forthwith, enabling her to

join in the P.G.Medical Course as per the allotment order given by the first respondent/CMC, Vellore dated 30.08.2020 within the time frame fixed by this Court.

For Petitioner : Mr.D.Krishnapradeep

For Respondents : Mr.V.Kathirvelu, Spl.GP for RR1
to 3
Mr.M.Seshadri for R4
Mr.Krishna Srinivas, for R5

ORDER

The matter is taken up through web hearing.

2.The writ petition is filed with the following prayer;
"to issue a Writ of Mandamus to direct the respondents 1 to 3 herein and their subordinates to accept the Letter of Resignation dated 01.09.2020 and relieve the petitioner from the post of Assistant Surgeon, Government Primary Health Centre, Kanguppam, Tirupathur, Health Unit District which post she is holding temporarily under the respondents 1 to 3 herein on or before 25.09.2020 or within such time as may be prescribed by this Court and return back all the original certificates as SSLC, HSC, CRRI Completion Certificate, Degree Certificate to the petitioner forthwith, enabling her to join in the P.G.Medical Course as per the allotment order given by the first respondent/CMC, Vellore dated 30.08.2020 within the time frame fixed by this Court ."

3. The petitioner is a Graduate in Medicine from Dr.M.G.R. Medical University, Tamilnadu. According to her, she was awarded M.B.B.S., Degree by the University in March 2016 and registered herself with the Tamil Nadu Medical Council, Chennai. The petitioner after her Graduation, was selected via the Medical Recruitment Board Examination for appointment to the post of Assistant Surgeon (General) in the scale of pay of Rs.56100-177500 with allowances.

4. After her selection, she was appointed by proceedings of the first respondent dated 06.11.2019 on a temporary basis and was posted in Government Primary Health Centre, Kanguppam, Thirupathur Health Unit District under the control of the second respondent. She was working as Assistant Surgeon during the period between 04.12.2019 and 31.08.2020.

5. While working as Assistant Surgeon, the petitioner was selected for admission to the Post Graduate Course in MD (Anesthesiology) and the allotment order was issued to the petitioner on 30.08.2020. The petitioner was allotted to undergo the Post Graduate Course in Medicine in the fifth respondent Institution.

6. In view of her selection for the admission to the Post Graduate Speciality Course, the petitioner was constrained to tender her resignation to the second respondent vide her letter dated 01.09.2020. The letter of resignation was also forwarded to the third respondent and the third respondent in turn forwarded the same to the second respondent. Pursuant to her admission, the petitioner has also joined in the fifth respondent Institution and has been undergoing the Course as on date.

7. The grievance of the petitioner in this Writ Petition is that the original certificates submitted by her, viz., S.S.L.C., H.S.C., C.R.R.I., Completion Certificate, Degree Certificate etc have not been returned to her and no proper relieving order has also been passed in response to her letter of resignation dated 01.09.2020 and therefore, the petitioner is before this Court.

8. Notice was ordered in the Writ Petition and Mr.V.Kathirvelu, learned Special Government Pleader has entered appearance for the respondents 1 to 3 and Mrs.S.Seshadri, learned counsel for the fourth respondent and Mr.Krishna Srinivas, learned counsel for the fifth respondent. A detailed counter affidavit has been filed. In the counter affidavit, the relief claimed by the petitioner is sought to be resisted on the ground that the appointment order dated 06.11.2019 issued to the petitioner itself has stipulated a condition that the petitioner should serve in Government service for a period of not less than 3 years and she shall not pursue or seek admission to undergo any P.G., Course within a period of two years of her joining the Government service. As the petitioner has violated the conditions of the appointment, she is not entitled to return of her original certificates.

9. The learned counsel appearing for the petitioner on the other hand would submit that the petitioner has not executed any undertaking or service bond in regard to the minimum period of employment in Government service. The conditions which were stipulated in the appointment letter dated 06.11.2019 cannot be enforced against the petitioner for the simple reason that the appointment itself has been termed as temporary. Therefore, the petitioner is not vested with any right to claim permanency in the appointment. In such event, the question of abiding by the conditions does not arise.

10. The learned counsel would also refer to a recent decision of the learned Single Judge of this Court rendered in WP.(MD)No.10275 of 2020 dated 28.08.2020. According to the learned counsel, a learned Single Judge of this Court, in the identical circumstances, has directed the authority to return the certificates. It is useful to refer various observations in the decision of the learned Judge which were rendered in the identical circumstances, as found in paragraph nos.10 to 21, which are extracted hereunder:

'10. I have considered the submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

11. No doubt, now, we are passing through very difficult period in our life time, where, not only our country, but the whole world, is struggling against the COVID-19 pandemic situation, where, the Doctors in the medical field, supporting staff and paramedical staff are in the forefront in the fight against COVID-19.

12. No doubt, the petitioner is a Doctor, who has been recently appointed and he is working in a rural area of the State. Therefore, his services is required for the betterment of the rural and needy people in that locality.

13. But at the same time, in the field of Medicine, we need more qualified people with updation, that alone will help the Society at large, as they can bring so much laurels in the field of Medicine for the benefit of humanity.

14. Moreover, if a Doctor with U.G. qualification is getting a chance to go for higher course like P.G. Medical Course or subsequently Super Speciality course, for which, after great struggle, by participating in the competitive exam, once the Doctor is able to get admission in P.G. Medical course, or any other higher Speciality course, that kind of chance cannot be thwarted by anyone including the Government / Employer.

15. Therefore, in these context, we have to balance both sides, as in one side, the Government needs more Doctors to serve the Society at large in a better way and on the other side, the Doctors have to equip

themselves by acquiring more and more qualification.

16. Here in the case in hand, the petitioner has decided to resign his job and accordingly, he has given his resignation letter and the same also having been forwarded to the third respondent by the second respondent for necessary action.

17. Once the petitioner decided to quit his job for the purpose of joining P.G Medical course, this Court feels that the Employer (i.e.) the respondents have no right to withhold his services by citing the reasons of COVID-19.

18. Moreover, once the petitioner has been selected in the P.G. Medical course, and within a time frame as fixed by the Selection Authority, unless and until the petitioner reports to the Institution, where he has been selected and going to be admitted, he may be in a position to lose the chance of getting admission, that will be a irreparable loss on the part of the petitioner, which will not be easily compensated.

19. Realizing that only, the petitioner has gone to the extent of deciding to quit his job and that is why, he has tendered his resignation. Therefore, this Court feels that the said contention raised by the learned Additional Government Pleader appearing for the respondents, by citing COVID-19 situation, certainly may not outweigh the situation faced by the petitioner and therefore, balancing both, this Court feels that, the petitioner can be permitted to join in the P.G. Medical course, for which, he may be enabled to get the certificates by accepting his resignation.

20. In that view of the mater, this Court is inclined to dispose of this writ petition with the following order:

(i) the second respondent is hereby directed to accept the resignation submitted by the petitioner dated 28.07.2020, to the third respondent, which was forwarded to the first respondent, on 29.07.2020, who in turn would forward the same immediately to the

2nd respondent, if not already forwarded and at the same time, return back all the original certificates such as SSLC, HSC, CRRI Completion Certificate, Degree Certificate, MCI Registration Certificate, Community Certificate, Course cum Conduct Certificate to the petitioner forthwith, enabling him to join in the P.G. Medical Course as per the allotment order given by the fourth respondent / National Board of Examinations, dated 17.08.2020 and the needful as indicated above shall be immediately undertaken without any further loss of time, by the respondents; and (ii) In view of the above, the fifth respondent is directed to keep one seat of Post Graduate in DNB General Surgery (Broad Speciality) Course vacant, for a period of one week enabling the petitioner to submit the certificates, pursuant to the direction issued above.

21. With these directions and observations, the Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.9153 of 2020 stands closed."

11. In fact, the learned counsel for the petitioner would fairly submit that there are other decisions of this Court wherein, the learned Judges have granted such directions against the petitioners therein fulfilling the bond conditions by issuing blank cheques or production of bank guarantee in the event of the petitioners therein not joining back in the Government service after successful completion of P.G. Course.

12. Mr.Krishna Srinivas, learned counsel appearing for the fifth respondent Institution would submit that the petitioner has already joined the fifth respondent Institution and has been continuing her Post Graduate Studies. According to the learned counsel, the Institution having admitted the petitioner in a Specialized Post Graduate Course, cannot afford to lose the candidate at this juncture, in the event of the petitioner's request being rejected by the Government/authorities for return of the certificates. Any such adverse development, the Institution would not be in a position to fill the vacancy for the present academic year and that would be a National waste. According to him, there are very few Post Graduate Courses available in every speciality and in the event of the petitioner not completing the Course due to any action of the Government not inclined to return the certificates, the loss is not only

for the petitioner but also for the Institution as well.

13. This Court has considered the submissions of the learned counsel for the petitioner, learned Special Government Pleader and Mr. Krishna Srinivas, learned counsel appearing for the fifth respondent.

14. The point for consideration in this case is, whether the petitioner herein is entitled to return of the certificates submitted by her to the authorities at the time of her appointment as Assistant Surgeon (General) vide appointment letter dated 06.11.2019 in the face of the petitioner resigning the job for undergoing Post Graduate Course in (Medicine) or not?

15. In fact, the learned Judge of this Court, in similar circumstances, has directed the Government to return the certificates and while giving such direction, the learned Judge has also reasoned as to how a delicate balance is to be maintained as between the aspiration of the candidate and also the interest of the Government. There are a few cases, wherein, at the time of appointment, the Government has mandated execution of service bond, and only on execution of the same, the candidates were given appointment in the State Medical Services and there were required work for a minimum period of time (two years or three years as the case may be). In the service bond, an amount was also quantified that in case of candidates quitting the service without fulfilling the service bond period, the certificates could be returned, only on payment of the specified amount as per the bond.

16. But as far as the case on hand is concerned, admittedly no service bond has been executed by the petitioner herein. This fact has also not been disputed in the counter affidavit. The only objection to the return of the certificates, was that there was stipulation in the appointment order dated 06.11.2019 mandating the petitioner to serve in Government service for a period of not less than 3 years and the petitioner may not be permitted to pursue any Post Graduate Course within a period of two years.

17. No doubt, it is the prerogative of the Government to prescribe reasonable conditions in the appointment letter in the larger interest of public purpose. At the same time, the Government having termed the appointment as temporary on one hand and on the other hand, insist the appointee to be bound by three year service period and barring two year period for pursuing Post Graduate Medical Course is opposed to fairplay and good conscience.

18. When no permanency is attached to the appointment, it is unfair for the official respondents to insist on the candidate to serve the minimum period of three years in Government service. Such condition in the appointment letter, in the light of the appointment being temporary, is a preposterous mandate which cannot be countenanced either in law or on facts. The official respondents cannot expect the candidates to hold on to the temporary appointment, unsure of their career prospect at the cost of their acquiring higher qualification and thereby enhancing their professional competence.

19. In any event, it is everyone's knowledge that the order of the day is that in Medical field, unless a Doctor is well equipped with a specialised qualification of a higher quotient, he/she cannot aspire to carve a niche for herself or himself. However, this is not to belittle the larger public interest as the Government seeking to serve. A fine balance between individual's legitimate aspiration as against advancing public interest calls for benign consideration and just conclusion.

20. The Government's objection could have been held valid provided the petitioner herein has executed any service bond. In this case, admittedly no service bond has been executed by the petitioner. Besides, the first respondent, who issued the appointment order to the petitioner, has appointed the petitioner only on temporary basis and the appointment order did not contain any Clause that after a particular period, the service of the petitioner would be considered for regularization. In the absence of any such positive prospect in the appointment letter, the appointing authority cannot insist on the petitioner to serve out the stipulated period. Such condition in the circumstances of the case is lopsided in favour of the appointing authority, detrimental to the fundamental interest of the petitioner.

21. As rightly submitted by the learned counsel for the fifth respondent, the Post Graduate seats in various specializations are not too many which are available to be claimed as a matter of Course in one's career. When a candidate secures a Post Graduate seat by coming out successful after competing at the National level selection process from among thousands of Medical Graduates desperately scrambling for success, such hard earned seat cannot be sacrificed by the petitioner as a consequence of her temporary employment. Gaining admission to a speciality Post Graduate Course is a life time opportunity which no candidate will be willing to forgo.

22. More over, if the petitioner herein were to leave P.G.Course midway, the loss is not only hers but also it is a irreparable institutional loss and in the larger perspective, it is a National loss too, as one precious Post Graduate seat would result in being un-utilized for the present academic year. Therefore, in the fitness of things and also taking into consideration the facts of this case that the petitioner herein has not executed any service bond and also her appointment was only temporary, the certificates submitted by her cannot be legally withheld by the official respondents and to insist on fulfillment of the conditions stipulated in the appointment letter is per se unreasonable and unjust too. Mere stipulation of service period and a bar for seeking admission to P.G. Course without voluntary acceptance of the conditions by the petitioner, in the opinion of this Court, such conditions have no legal sanctity. Therefore, this case may not be compared to the other cases, wherein, the learned Judges of this Court have given directions to return the original certificates with a fiat to provide security for the payment of bond amount.

23. In the above circumstances, the Writ Petition is allowed and the respondents 1 to 3 are directed to return the original certificates submitted by the petitioner as indicated by her in the Writ Petition to enable the petitioner to continue her Post Graduate Course in the fifth respondent Institution. The original Certificates shall be returned to the petitioner on or before 15.12.2020 along with a proper relieving order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Public Health and Preventive Medicine,
Chennai-600006.
2. The Deputy Director of Health Services,
Health Services,
Thirupathur.
3. The Block Medical Officer,
Government Community Healthy Centre,
Vaduganthangal.

4. The Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi-110029.
5. The Registrar,
Christian Medical College,
Vellore.

+1cc to Mr.S.Ramasubramaniam & Associates, Sr.39030 (17/11/2021)

+1cc to Mr.N.Damodaran, Advocate, Sr.No.38961 (17/11/2021)

W.P.No.14247 of 2020

SAI (CO)
CS/04/12/2020
KKV/17/11/2021