

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.10.2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.14906 of 2020

WMP Nos.18501, 18502, 18503, 18505, 18507, 18509 of 2020

Dr.A.Sangamithra

...Petitioner

Vs.

1. The State of Tamil nadu,
Rep. By its Principal Secretary to Government,
Department of Health, Medical Education and Family Welfare,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Director of Medical and Rural Health Services,
DMS Campus,
359, Anna Salai, Chokkalingam Nagar,
Teynampet, Chennai 600 006.
3. The Director of Medical Education,
Directorate of Medical Education,
162, Periyar E.V.R.High Road,
Kilpauk, Chennai 600 010.
4. The Joint Director of Medical and Rural Health Services,
Race Course Road,
Coimbatore - 641 018
5. The Chief Medical Officer,
Kinathukadavu Government Hospital,
Coimbatore 641 109
6. The Dean,
Madras Medical College,
EVR Salai,
Chennai 600 003.
7. The Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi - 110 029.

8. The Medical Counselling Committee of India (MCCI),
Rep. By its Director General,
Director General of Health Services,
Ministry of Health and Family Welfare Department,
Government of India
No.446, Nirman Bhavan,
Moulana Azad Bhavan,
New Delhi - 110 108

...Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent comprised in G.O.Ms.No.185, Health and Family Welfare (MCA1) Department dated 13.04.2020 and quash the same as contrary to law, arbitrary, unconstitutional, illegal and violative of the principles of natural justice insofar as it mandates furnishing of a Bank Guarantee as stipulated in Para No.4(i) and consequently, direct the 2nd to 6th respondents to return the petitioner's original certificates / Mark sheets, including HSC Mark Sheet, MBBS Degree Certificate, MBBS Registration Certificate, MBBS Mark sheets, MS Degree certificate for the purpose of pursuing Super Speciality Course in Plastic and Reconstructive Surgery through the National Counselling for NEET Super Speciality Courses (D.M/M.CH & DNB SS) 2020-21.

For Petitioner	:	Mr.K.M.D.Muhilan
For Respondents	:	Mr.E.Manoharan Special Government Pleader

ORDER

This Writ Petition has been filed challenging the Government Order issued by the 1st respondent in G.O.M.S. No. 185 dated 13.4.2020 and for a consequential direction to the respondents to return the original certificates/marksheets belonging to the petitioner in order to enable the petitioner to join in the Super Specialty course.

2. When the matter was taken up for hearing today, Mr.E.Manoharan, learned Special Government Pleader appearing on behalf of Respondents 3 to 6 submitted that the petitioner has executed a bond for a sum of Rs. 40 lakh with an undertaking that the petitioner will work in the Government Hospital for 2 years. The learned Special Government Pleader further submitted that the petitioner has rendered services for 13 months and a balance of 11 months is yet to be completed as per the bond condition. The learned Special Government Pleader further submitted that the petitioner is requesting for handing over the

certificates in order to enable the petitioner to join the super specialty course. In order to consider the request made by the petitioner, the petitioner will have to give an undertaking to give a bank guarantee for a sum of Rs. 18,33,326 (11 months x Rs.1,66,666) in favour of the 6th respondent College. On such furnishing of bank guarantee, the certificates will be handed over to the petitioner and the petitioner after the completion of super specialty course, will have to return back the original certificates and complete the remaining period of service as undertaken in the bond.

3. The learned counsel for the petitioner submitted that the petitioner is not in a position to furnish the bank guarantee for the entire amount demanded by the respondents, since it requires an equal amount to be kept in deposit and the petitioner does not have the financial wherewithal to arrange for such a huge amount. The learned counsel submitted that with very great difficulty, the petitioner will somehow arrange for funds and give a Bank guarantee for sum of Rs. 10,00,000/- in favor of the college which will have a validity period of 37 months from the date of admission in the Super specialty course. The learned counsel further submitted that the petitioner will issue a post dated cheque for sum of Rs. 8,33,326/- in favor of the college. The learned counsel submitted that the petitioner will fill up the amount and also sign the cheque and will leave the date open. The learned counsel further submitted that considering the financial constraints faced by the petitioner, the request made by the petitioner can be considered by this Court. The Learned Counsel further submitted that the petitioner undertakes to rejoin the service within a period of 15 days from the date of the completion of super specialty course. If the petitioner fails to do so, the Bank Guarantee can be invoked and the cheque can be presented after filling up the date. The Learned counsel assured that such a contingency will not arise in this case since the petitioner wants to genuinely complete the government service after the completion of the Super Speciality course.

4. This Court has carefully considered the submissions made on either side and has taken note of the subsequent developments that has taken place in this case.

5. This Court has to strike a balance and ensure that the petitioner is not prevented from pursuing further with her higher studies and at the same time, the respondents are also not deprived of utilizing the services of the petitioner as per the bond condition. In this case, the petitioner has rendered services for a period of 13 months even according to the respondents. Therefore, there has to be some assurance from the petitioner to make her come back and complete her service as per

the bond condition. This assurance can be ensured by taking sufficient security from the petitioner by way of bank guarantee and post dated cheque. This Court believes that the petitioner will not go back on her words and she will come back after completing the super specialty course and render service as per the bond condition.

6. The petitioner has requested this Court to consider giving a bank guarantee for a sum of Rs. 10,00,000/- and for giving post dated Cheque for the balance sum of Rs. 8,33,326/-. Considering the financial constraints expressed by the petitioner, this Court is inclined to accept the request made by the petitioner. This Court has also taken into consideration the fact that the petitioner is a meritorious student.

7. In view of the above, there shall be a direction to the petitioner to issue bank guarantee in favor of Dean, Madras Medical College for a sum of Rs. 10,00,000/-. The bank guarantee shall have a validity period of 37 months from November 2020. The petitioner shall also issue a cheque in favor of Dean, Madras Medical College, Chennai 600 010, duly signed and amount filled up to the tune of Rs. 8,33,326/-. The date shall be left blank in order to ensure that the cheque will be put to use at the appropriate time if in case, the petitioner does not fulfill the undertaking. Immediately after the petitioner fulfills these two conditions, the 6th respondent shall handover all the original certificates to the petitioner to enable the petitioner to join the super specialty course.

8. The petitioner shall rejoin service within a period of 21 days from the date of completion of super specialty course. The petitioner shall hand over all the certificates at the time of rejoining and she shall complete the balance period of service. Immediately on rejoining, the cheques issued by the petitioner as guarantee shall be returned back to the petitioner.

9. This Writ petition is disposed of with above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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+6ccs to Mr.K.M.D.Muhilan, Advocate, S.R.No.34574

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PP(CO)
KKV/05/11/2020