

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.15363 of 2020
and
WMP No.19216 and 19217 of 2020

Dr.R.Narayane

...Petitioner

Vs.

- 1.The Principal Secretary
to Government of Tamil Nadu
Health and Family Welfare Department
Secretariat, Chennai.
- 2.The Director of Medical Education
Chennai
- 3.The Director of Medical and
Rural Health Services
Chennai
- 4.Dean
Kilpauk Medical college
Chennai.
- 5.Sri Jayadeva Institute of Cardiovascular
Science and Research
Bannerghatta Main Road
Phase 3, Jayanagar 9th Block
Jayanagar, Bengaluru, Karnataka.

...Respondents

This Writ Petition is 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 in G.O.Ms. No. 185, Health and Family Welfare (MCA1) Department, dated 13.04.2020 and quash the condition found in clause-4 relating to submission of Bank Guarantee as illegal and arbitrary and in consequence thereof, direct the 4th respondent to return the original certificates to the petitioner on execution of the bond without submission of the Bank Guarantee in order to produce the same before the 5th respondent for pursuing super speciality course.

For Petitioner : Mr.N.Manokaran

For Respondents: Mr.E.Manoharan
Special Government Pleader

ORDER

On consent given by either side, the main Writ Petition itself is taken up for final hearing.

2. This Writ Petition has been filed challenging clause-4 in G.O.Ms.No.185, Health and Family Welfare (MCA1) Department, dated 13.04.2020 and for consequential direction to the fourth respondent to return the original certificates to the petitioner without insisting for the bank guarantee.

3. The learned counsel for the petitioner submitted that the petitioner completed her MBBS Course during the period from 2009-2015. She, thereafter, registered her name with the Tamil Nadu Medical Council. The petitioner, thereafter, completed her M.D Course in General Medicine in the year 2019. The learned counsel submitted that the petitioner had executed a bond at the time of joining the M.D Course, wherein she had undertaken to put in two years of Government Service, failing which, she will pay a sum of Rs.40,00,000/- (Rupees Forty Lakhs only).

4. The learned counsel for the petitioner further submitted that the petitioner was appointed as an Assistant Surgeon on 31.10.2019 and presently, she is engaged on Special COVID duty at Government Hospital, Thiruvannamalai District.

5. The learned counsel further submitted that the petitioner appeared for NEET Examination in order to pursue with Super Speciality Course and she successfully cleared the examination and secured 33rd rank on All India Basis. The learned counsel further submitted that the petitioner would require her original certificates in order to submit the same before the concerned college, where the petitioner will be undergoing the Super Speciality Course. Since the petitioner has executed a bond and is yet to complete the two years period, she is not in a position to get back the certificates and therefore, the present Writ Petition has been filed challenging the relevant clause in the G.O., which insists for giving bank guarantee.

6. The learned counsel for the petitioner fairly submitted that the petitioner is not interested in questioning the Government Order, which stipulates giving bank guarantee, since the petitioner has already signed a bond and given an undertaking. Therefore, the learned counsel submitted that

some via media can be struck in order to balance the rights of the petitioner as well as to ensure that the petitioner comes back after completing the Super Speciality course and completes the remaining period of Government Service.

7. Per contra, Mr.E.Manoharan, learned Special Government Pleader appearing on behalf of the respondents 1 to 4 submitted that the petitioner is yet to complete 13 months of Government Service and if the bank guarantee equivalent to the bond amount is calculated on a pro-rata basis, the petitioner will have to furnish a bank guarantee for a sum of Rs.21,66,666/- (Rupees Twenty One Lakhs Sixty Six Thousand Six Hundred and Sixty Six only). The learned Special Government Pleader submitted that the petitioner is bound by the bond conditions and unless and otherwise such a stipulation is made, it will become very difficult to secure the remaining service of the petitioner in the Government Service.

8. Mr.N.Manokaran, learned counsel for the petitioner, in reply to the above submissions, brought to the notice of this Court the stand taken by the petitioner at para-4 of the affidavit filed in support of the Writ Petition. The learned counsel submitted that the petitioner is a meritorious candidate, who gives an assurance that she will come back and serve the remaining period in Government Service and she does not have the financial wherewithal to provide bank guarantee for the entire amount. The learned counsel, therefore, requested this Court to consider the reduction in the bank guarantee and a further request was made to the effect that the bank guarantee will be given in the name of the petitioner/her parents/her relatives. The learned counsel submitted that the petitioner has tried her best to get the bank guarantee, but she was informed that she requires an equal amount of deposit in the bank account and only then, the bank guarantee will be issued for that amount.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court had an occasion to consider a similar issue in W.P.No.14906 of 2020. For proper appreciation, the relevant portions in the order passed on 16.10.2020 are extracted hereunder:-

"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. "

11. In the considered view of this Court, the petitioner herein can also be treated in the same way in which the

concerned petitioner was given the benefit in the above Writ Petition.

12. In view of the above, there shall be a direction to the petitioner to issue bank guarantee in favour of Dean, Kilpauk Medical College, for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). The bank guarantee shall have a validity period of 37 months from November 2020. The bank guarantee can be given jointly by the petitioner, her father and her relatives. The petitioner shall also issue a cheque in favour of Dean, Kilpauk Medical College, Chennai, duly signed and amount filled up to the tune of Rs.10,66,666/- (Rupees Ten Lakhs Sixty Six Thousand Six Hundred and Sixty Six only). 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 fulfil the undertaking. Immediately after the petitioner fulfils these two conditions, the fourth respondent college shall hand over all the original certificates to the petitioner to enable the petitioner to join the Super Speciality Course.

13. The petitioner shall rejoin the service within a period of 21 days from the date of completion of Super Speciality Course. The petitioner shall hand over all the certificates at the time of rejoining the service and she shall complete the balance period of Government service. Immediately on rejoining, the cheque issued by the petitioner as guarantee shall be returned back to the petitioner.

14. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Principal Secretary
to Government of Tamil Nadu
Health and Family Welfare Department
Secretariat, Chennai.

2.The Director of Medical Education
Chennai

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3.The Director of Medical and
Rural Health Services
Chennai

4.Dean
Kilpauk Medical college
Chennai.

+1cc to Mr.N.Manokaran, Advocate SR.35250

W.P.No.15363 of 2020

and

WMP No.19216 and 19217 of 2020

PA (CO)
CB(16/12/2020)



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