

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.11.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16849 of 2020

WMP No.20899 of 2020

Dr.A. Narendrakumar

.... 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, Stanley Medical College, Chennai.
5. Dr. Ram Manohar Lohia Hospital, Baba Khark Singh Rd., near Gurudwara Bangla Sahib, Ram Manohar Lohia Hospital, Type III, Connaught Place, New Delhi.

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus thereby 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.P.Ganapathi Subramanian

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 2 to 4 submitted that the petitioner has executed a bond for a sum of Rs. 40 lakhs 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 4 months and a balance of 20 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. 33,33,336/- (20 months x 1,66,666/-) in favour of the 4th 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. 20,00,000/- 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. 33,33,336/- 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 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 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 his 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 4 months even according to the respondents. Therefore, there has to be some assurance from the petitioner to make him come back and complete his 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 his words and he will come back after completing the super specialty course and render the service as per the bond condition.

6. The petitioner has requested this Court to give a bank guarantee for a sum of Rs. 20,00,000/- and for giving post dated Cheque for the balance sum of Rs. 33,33,336/-. 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, Stanley Medical College for a sum of Rs. 20,00,000/-. The bank guarantee shall have a validity period of 37 months from October 2020. The petitioner shall also issue a cheque in favor of Dean, Stanley Medical College, Chennai 600 010, duly signed and amount filled up to the tune of Rs.33,33,336/-. 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 4th 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 he 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-VII)

//True Copy//

Sub Assistant Registrar

rka/msr

To

- 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,
Stanley Medical College, Chennai.

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SR-II (CO)
CB(09/12/2020)

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