

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.16278 of 2020

and

W.M.P.Nos.20354 & 20356 of 2020

Dr.G.Mannar Mannan

...Petitioner

-Vs-

- 1.The Principal Secretary to Government of
Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai.
- 2.The Director of Medical Examination,
Chennai.
- 3.The Director of Medical and Rural Health Services,
Chennai.
- 4.The Dean,
Madras Medical College,
Chennai.
- 5.The Joint Director of Medical and Rural Health
Services (JDHS),
Cuddalore District Government Headquarters Hospital,
Hospital Road,
Manjakuppam,
Cuddalore District. सत्यमेव जयते
6. The Chief Medical Officer,
Kurunjipadi Government Hospital,
Hospital Road,
Cuddalore District.
- 7.The Director,
National Board of Examinations,
Medical Enclave,
Ansari Nagar,
Ring Road,
New Delhi.

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8.The Medical Counseling Committee of India,
Rep by its Director General,
Director General of Health Services,
Ministry of Health and Family Welfare Department,
Union of India,
No.446, Nirman Bhavan,
Moulana Azad Bhavan,
New Delhi.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first 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 fourth respondent to return the original certificates to the petitioner on execution of the bond without submission of the Bank Guarantee, in order to pursue the Super Speciality Course.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.S.Karthigai Balan, GA

O R D E R

This writ petition has been filed to call for the records of the first 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 fourth respondent to return the original certificates to the petitioner on execution of the bond without submission of the Bank Guarantee, in order to pursue the Super Speciality Course.

2. The petitioner has completed M.B.B.S. Course during 2009-15 at Kilpauk Medical College. Thereafter, he joined M.S (General Surgery) at Madras Medical College, Chennai and completed the course in 2019. On 31.10.2019, he was appointed as Assistant Surgeon in Kurinjipadi Government Hospital, Cuddalore District. At the time when the petitioner was appointed, he executed a bond that he would serve in Government service for a stipulated period, failing which, the petitioner was under legal obligation to pay damages to the tune of Rs.40,00,000/-

3. The petitioner in the meanwhile, appeared in NEET Examination for the year 2020, seeking admission to Super Speciality Course and in the competitive examination, the

petitioner appears to have secured all India rank as 180 in Surgical Oncology and all India rank as 66 in Vascular Surgery. The petitioner finally has been admitted to Super Speciality Course in the selection.

4. However, when he approached the fourth respondent for return of the original certificates submitted at the time of appointment, the authority insisted upon the compliance of G.O.Ms.No.185, Health and Family Welfare (MCA1) Department dated 13.04.2020. Challenging the same, the petitioner is before this Court.

5. When the matter is taken up for hearing, the learned counsel appearing for both the petitioner as well as the respondents would submit that in similar circumstances, a learned Judge of this Court, has passed orders directing the petitioners therein to execute a Bank Guarantee for substantial amount and the remaining bond amount to be secured by issuing a blank cheque.

6. The learned Government Advocate would submit that in this case, the total due from the petitioner by giving pro rata credit for the period of service rendered by him in Government service is Rs.23,33,324/-. He would submit that the substantial amount may be directed to be given by Bank Guarantee for 37 months and a blank cheque for the remaining amount. A similar direction has been given in W.P.No.14906 of 2020 in paragraph Nos.5 to 8 are reproduced 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 the service as per the bond condition.

6. The petitioner has requested this Court to give 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."

7. In fact, the learned Government Advocate for the respondents would also refer to similar direction issued by the learned Single Judge with little variation depending on the facts and circumstances of the case, but, however insisted that the above direction may be followed for the case on hand.

8. In consideration of the above facts and submissions, the writ petition is disposed of by directing the petitioner to execute a Bank Guarantee for a sum of Rs.12,00,000/- covering a period of 37 months and for the remaining amount, a blank cheque duly filled in as Rs.11,33,324/-, shall be issued in favour of the fourth respondent, within a period of one week from the date of receipt of a copy of this order. On execution of the Bank Guarantee as well as the issuance of the blank cheque, the authority concerned is directed to return the original certificates submitted by the petitioner to enable the petitioner to pursue the Super Speciality Course, within a

period of one week thereafter.

9. It is made clear that in case, the petitioner failed to join the Government service, after successful completion of the Course within a reasonable time, to complete the remaining part of his commitment under the bond, both the Bank Guarantee and the cheque may be encashed by the official respondents.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

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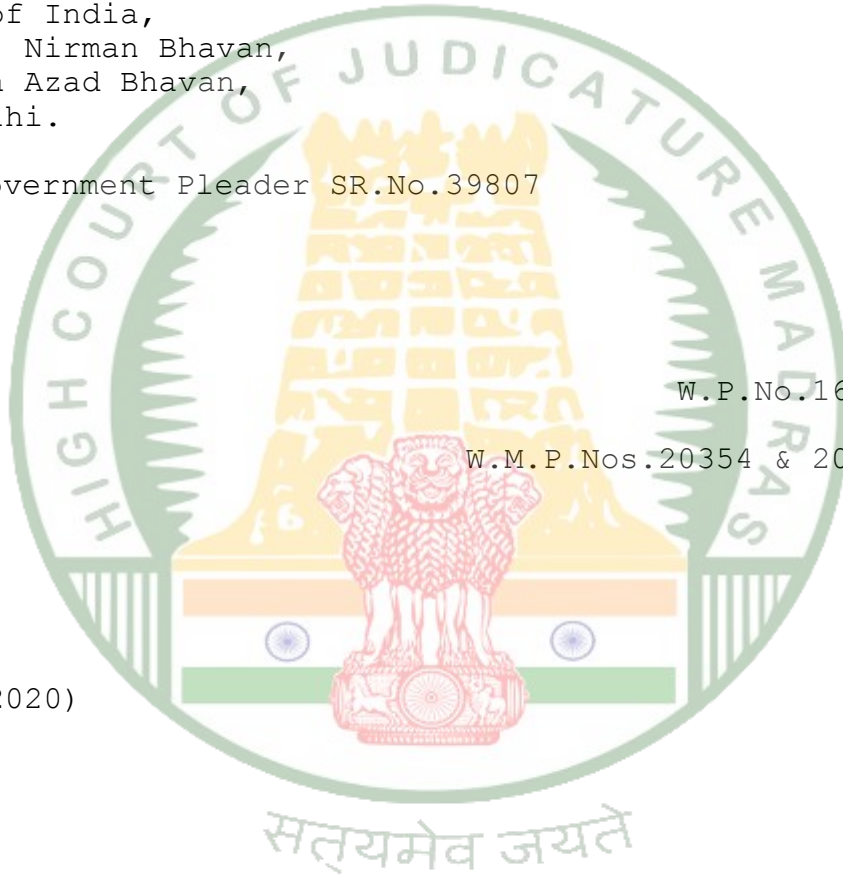
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+lcc to Government Pleader SR.No.39807

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MJB (CO)
RN (16/12/2020)



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