



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
10.03.2020

Delivered on
16.03.2020

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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.35868 of 2019 and WP No.3931 of 2020
and

WMP Nos.36775 of 2019, 2898 & 4657 of 2020

Dr.Balaji.S

.. Petitioner in both WPs

.Vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, St. George Fort,
Chennai 600 009.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.

3. The Dean,
Madras Medical College,
Chennai 600 003

..Respondents in both WPs

PRAYER in WP No.35868 of 2019 : Writ petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 2nd and 3rd respondents to return all original certificates to the petitioner by passing orders on the representation dated 23.12.2019 and 24.12.2019.

PRAYER in WP No.3931 of 2020 : Writ petition has been filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus to call for the records pertaining to passing of the order dated 13.01.2020 in proceedings Ref.No.00502/ME5(1)/2020 on the file of the 3rd respondent and quash the same and consequently, direct the 2nd and 3rd respondents to return all original certificates to the petitioner for the purpose of admission to Postal Doctoral DM/Mch Fellowship Course at Sree Chitra Tirunal Institute for Medical Science & Technology, Trivandrum, Thiruvananthapuram.

For Petitioner : Mr.G.Justin
in both WPs Mr.C.Balasundar

For Respondents: Mr.E.Manoharan,
in both WPs Special Government Pleader



COMMON ORDER

Both the writ petitions are taken up together, since the issue involved is common and a common judgment is passed.

2. The petitioner, who hails from Karnataka, completed the MD Course from Darbhanga Medical College, Bihar. He thereafter joined D.M (Neurology) course in Madras Medical College in the year 2016 as a non-service candidate and completed the course in the year 2019. The petitioner wanted to pursue a fellowship course at Sree Chitra Triunal Institute for Medical Science and Technology at Trivandrum. For this purpose, the petitioner sought for the return of his original certificates submitted by him to the 3rd respondent, at the time when he was admitted for the DM (Neurology) Course. Since it was not returned, he filed WP No.35868 of 2019, before this Court, seeking for a direction to the respondents to return back his original certificates. When this writ petition was pending, this Court passed an interim order on 09.01.2020, by permitting the petitioner to make a representation to the 3rd respondent and directing the 3rd respondent to consider the same and pass appropriate orders, in accordance with law.

3. The petitioner made a representation to the 3rd respondent and the 3rd respondent by his impugned letter dated 13.01.2020, directed the petitioner to deposit a sum of Rs.40 lakhs as a condition for the return of the original certificates. Aggrieved by the same, the petitioner filed WP No.3931 of 2020.

4. The learned counsel for the petitioner submitted that the 3rd respondent has imposed a onerous condition on the petitioner for returning back the original certificates and it is impossible for the petitioner to comply with the same. The learned counsel further submitted that there is already a direction by the 2nd respondent to all the Deans of the Medical Colleges to return the certificates to the students, who complete the PG Course and get admission to DNB and fellowship course. In spite of the same, the petitioner has been discriminated. The learned counsel submitted that the non-return of the original certificates amounts to preventing the petitioner from pursuing his higher studies and it affects his fundamental rights. The learned counsel further submitted that the petitioner undertakes to return back after the completion of the course and he will also execute the necessary affidavit to that effect. Thereafter, he will serve as per the bond executed by the petitioner.

5. The 3rd respondent has filed a counter affidavit in this case. It is stated in the Counter affidavit that the petitioner being a non-service candidate was required to execute a bond and the petitioner also accepted the said



condition. However, he did not execute the bond even after the completion of the course. It is only during the pendency of the writ petition, he executed a bond on 08.01.2020. It is further stated in the counter affidavit that the petitioner has already been posted at District Head Quarters, Dindigul Government Hospital, as Assistant surgeon. The 3rd respondent has taken a further stand that even though the letter of the 2nd respondent dated 13.08.2018, contains instructions for issuing original certificates for non-service post graduates to do their higher studies, the same can be applied only on a case to case basis.

6. The 3rd respondent has further stated that the petitioner inspite of being aware at the time of admission that he has to execute a bond, procrastinated from doing so and sought to use the same as an excuse to wriggle out of Government Service. It is only because of the orders passed by this Court, the petitioner has now executed a bond. Therefore, according to the 3rd respondent, going by the antecedents of the petitioner, it will not be safe to hand over the original certificates without getting a security by way of Bank Guarantee and the same would cause substantial loss and prejudice to the State.

7. The learned Special Government Pleader appearing on behalf of 3rd respondent submitted that the State Government spends nearly a sum of Rs.21 lakhs on each post graduate student and whereas, the Government is only charging Rs.30,000/- per annum. Therefore, bonds are executed by the candidates to ensure that they render at least two years service in the Government Hospitals. The learned counsel further submitted that there are lots of instances where the candidates have violated the bond conditions.

8. The learned Special Government Pleader relied upon the judgment of the Hon'ble Supreme Court in [Association of Medical Super Speciality Aspirants and Residents & others Vs. Union of India and others] in Writ petition (Civil) No.36 of 2018 dated 19.08.2018 and submitted that the Supreme Court has upheld the execution of bond and the Compulsory Government service in view of the larger public interest. The learned counsel further submitted that the bond executed by the candidates cannot be held to be a restraint on profession and it is not in violation of Section 27 of the Indian Contract Act, 1872. The learned Special Government Pleader therefore submitted that the petitioner is bound by the conditions contained in the bond and therefore, either he has to give a security to ensure his return to do the compulsory Government service or he should join the Government Hospital, District Head Quarters, Dindigul, in which he has been posted.

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



10. The petitioner admittedly in this case failed to execute a bond at the time when he joined in the 3rd respondent college as a non-service candidate in the year 2016. He completed the course in the year 2019. Even thereafter, he did not execute the bond. It was only during the pendency of this writ petition, due to the insistence of this Court, the petitioner ultimately executed a bond on 08.01.2020. In view of this attitude of the petitioner, the 3rd respondent is very apprehensive that the petitioner will not return back and do the compulsory government service as undertaken in the bond. According to the respondents, there are large number of cases where the Doctors have violated the conditions of the bond and failed to do the Compulsory Government Service.

11. The petitioner heavily relies upon the proceedings of the 2nd respondent dated 13.08.2018. This proceedings gives instructions to the Deans of Government Medical Colleges under the control of the 2nd respondent to issue the original certificates for non-service post graduates, who have been selected for DNB/ fellowship course after getting an undertaking. The format of the undertaking is also found in the said letter dated 13.08.2013. According to the petitioner, the petitioner is also willing to give such an undertaking and the petitioner assures that he will return back and comply with the conditions of the bond and do the compulsory government service.

12. Under normal circumstances, the candidates can be allowed to give such an undertaking and the certificates can be returned to them for undergoing the fellowship course. However, in the present case, the 3rd respondent has a strong apprehension that the petitioner will not return back, since he was dilly-dallying from executing the bond from the year 2016 onwards and only when this Court insisted, the petitioner ultimately executed a bond on 08.01.2020.

13. During the pendency of this writ petition, this Court passed an order on 18.02.2020 and the same is extracted hereunder:-

Mr. E.Manoharan, Learned Special Government Pleader takes notice for the Respondents.

2.Learned Counsel for the Petitioner states that the Petitioner has been selected for admission to Sree Chitra Tirunal Institute for Medical Sciences and Technology, which has been declared as an Institute of National Importance by the Government of India, and has been exempted for centralized admission through NEET PG Session 2019 and as such, the benefit that has been granted to similarly placed candidates selected through NEET on humanitarian



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grounds could be also extended to the Petitioner, but such request made by the Petitioner has been rejected by the Third Respondent in the order dated 13.01.2020, which is impugned in this Writ Petition. It is also informed that the Petitioner is willing to furnish a bank guarantee for Rs. 40,00,000/- in lieu of that amount required to be remitted by him in the impugned order and that after completing higher studies, the Petitioner would serve for the required period, and an affidavit to that effect shall be filed on the next hearing.

Post the matter along with W.P. No. 35868 of 2019 on 21.02.2020.

14. After the above order was passed, the learned counsel for the petitioner on instructions submitted that the petitioner cannot furnish a bank guarantee for a sum of Rs.40 lakhs.

15. The whole purpose of education is to fine tune one's attitude and reach an exalted level in terms of higher values expected of a human being. This is more so, in the case of Doctors, since they are directly dealing with the lives of their fellow human beings. However, unfortunately, this purpose has not been achieved with the present day education and we are living in an era, where persons have started adopting illegal means to achieve the ends. In other words, the ends have become more important than the means and consequentially, all methods are being adopted to somehow reach the end. This is evident from the fact that the Hon'ble Supreme Court had recorded in the above cited judgment that 217 candidates have violated the bond conditions. This means that a huge amount of money that has been spent on these candidates, have gone waste and they have happily enjoyed the concession shown to them and back stabbed the State by not doing the compulsory Government service. Practically, it is impossible for the authorities to enforce the bond condition and they do not have the man power or the mechanism to bring back the candidates and make them to do the compulsory government service.

16. Therefore, as rightly contended by the 3rd respondent, even though the 2nd respondent has given instructions for giving the original certificates by receiving an undertaking, it can be only directory in nature and it has to be applied only on a case to case basis.

17. In the present case, the petitioner belongs to Karnataka State. He joined the course in the year 2016 in the 3rd respondent college and completed the same in the year 2019 as a non-service candidate. Through out, he did not execute a bond. Only on this Court insisting for the execution of a bond, the petitioner ultimately executed the bond on 08.01.2020. If the petitioner ultimately violates the



undertaking after taking back the original certificates, the respondents do not have any means to get back the petitioner to this State and make him do the compulsory Government service. The apprehension expressed by the 3rd respondent is well founded and that is the reason why through the impugned letter dated 13.01.2020, the petitioner has been directed to pay a sum of Rs.40 lakhs. Even if the petitioner does not want to pay this amount, the petitioner should have given at least a Bank guarantee for the said amount. The petitioner is not willing to give any such guarantee.

18. In view of the above discussion, this Court is not inclined to interfere with the impugned letter dated 13.01.2020, issued by the 3rd respondent and the petitioner is directed to immediately join duty at the Dindigul District Head Quarters Government Hospital, as per the posting orders issued on 22.01.2020.

19. In the result, both the writ petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, St. George Fort,
Chennai 600 009.
2. The Director of Medical Education,
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Kilpauk, Chennai 600 010.
3. The Dean,
Madras Medical College,
Chennai 600 003

+1cc to Mr.G.Justin, Advocate SR.No.23733

+1cc to Government Pleader SR.No.23688

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