



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE **P.D. AUDIKESAVALU**

W.P. (MD) No. 6145 of 2020

(Through Video Conferencing)

WEB COPY

Dr. K.Gautham

: Petitioner

vs.

1. The Director of Medical Education,
EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.

2. The Dean,
Madurai Medical College,
Madurai- 625 020.

: Respondents

Prayer: The Writ Petition is filed to issue a Writ of Mandamus, directing the Second Respondent to return all the Petitioner's original certificates and testimonials as mentioned in his representation dated 01.05.2020 within the period that may be stipulated by this Hon'ble Court so as to enable him to join DNB PDCET course in the last week of May 2020.

For Petitioner
For Respondents

: Mr. M.Jerin Mathew
: Mr. Aayiram K.Selvakumar
Additional Government Pleader

O R D E R

Heard Mr. M.Jerin Mathew, Learned Counsel for the Petitioner and Mr. Aayiram K.Selvakumar, Learned Additional Government Pleader appearing for the Respondents and perused the materials available on record, apart from the pleadings of the parties.

2. This Court during the earlier hearing on 18.05.2020 passed the following self-explanatory order:-

" The Petitioner, who had completed M.B.B.S. degree in March 2013 was selected for Diploma in Ophthalmology in Madurai Medical College in All India quota in May 2017. In terms of the conditions for selection, the Petitioner executed a bond to compulsorily serve the State for two years after completing the course and also submitted the following documents:

- (i) M.B.B.S. Degree Certificate
- (ii) M.B.B.S. Medical Registration Certificate



- (iii) CRRI Certificate
- (iv) M.B.B.S. Course cum Conduct Certificate
- (v) M.B.B.S. First to Final Year Mark
- (vi) H.Sc. Mark Sheet
- (vii) DO Mark Sheet
- (viii) DO Provisional Certificate
- (ix) DO Degree Certificate
- (x) DO Course cum Conduct Certificate

The Petitioner passed the final examination held in May 2019 and an order dated 18.10.2019 was issued to him posting him as Assistant Surgeon, but he did not join duty as per the agreed terms.

2. While the matter stood narrated supra, the Petitioner had applied for further studies in DNB (Post Diploma) conducted by National Board of Examinations, New Delhi in January 2020 session and had secured 492 out of 800 marks. The Petitioner made a representation dated 01.05.2020 to the Second Respondent stating that he had qualified with All India Merit position in Ophthalmology and wanted to advance his skills to better serve the nation, and requested to release all his original certificates and has undertaken to serve the required two years of compulsory service after completing higher studies. As the Petitioner had not received any response to the same, the present Writ Petition has been filed for directing the Second Respondent to return all his original certificates and testimonials so as to enable him to join DNB (Post Diploma) course.

2. At the outset, it must be recapitulated here that the Hon'ble Supreme Court of India in **Association of Medical Super Speciality Aspirants and Residents vs. Union of India** [(2019) 8 SCC 607] has held that the requirement by the various States in the Country that the candidates admitted to Post Graduate Speciality Courses in Medicine that they would have to execute compulsory bond to serve the Government for a specified period after the completion of the course or pay the amount fixed as compensation in lieu thereof, is legally valid and does not offend Articles 16, 19(1)(g), 21 and 23 of the Constitution, Section 14 of the Specific Relief Act, 1963, and Section 27 of the Indian Contract Act, 1872, apart from falling within the competence of the State Governments. In that ruling, it has also been noticed that the State Governments have not attempted to enforce the contract of personal service in view of the bar under Section 14 of the Specific Relief Act, 1963, meaning thereby that if the executant of the bond failed to comply with the agreed condition to serve the Government for the specified period, he would be liable to pay the amount fixed in the bond as compensation for such breach of that contract.

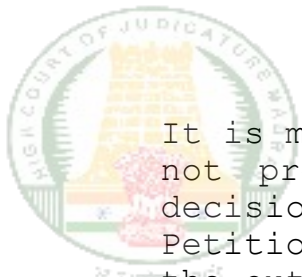


3. It is the fervent plea of the Petitioner in this case that he is willing to serve the Government for the agreed period in the bond, but after completing his higher studies for which he has been now selected, and has sought for return of his original documents, which are now in the custody of the Respondents, in the aforesaid representation made for that purpose.

4. Learned Counsel for the Respondent submits that instructions are awaited by the Respondents from the higher authorities for taking a decision on the aforesaid representation made by the Petitioner, as it would have to be uniformly applicable to all similarly placed persons, and he also seeks time to file Counter Affidavit in the Writ Petition.

5. Learned Counsel for the Petitioner contends that the Petitioner immediately requires the original documents for producing the same to the concerned authorities for joining in the higher course of study for which he has been selected and in order to show his bonafides that he would report for duty on completing the higher course of study, the Petitioner, in furtherance to the order dated 14.05.2020 passed by this Court, has invested the bond amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) in an interest fetching deposit bearing No. 0931916 in Indian Bank, High Court Branch, Madurai in favour of the Registrar (Judicial) of this Court to the credit of this Writ Petition initially for a period of two years and renewable automatically for the same period from time to time, and has handed over that fixed deposit receipt with the Registry today, which has been placed on record.

6. Having regard to the rival submissions made viz-a-viz the legal position governing the matter in controversy, the aforesaid deposit made by the Petitioner is an adequate safeguard to ensure that if the Petitioner fails to join duty after the course period which he now intends to undergo, the Respondents can seek to encash it in satisfaction of the bond condition. Accordingly, subject to the further orders in this Writ Petition, the Respondents shall forthwith return the original certificates and testimonials of the Petitioner by 19.05.2020 under written acknowledgment for the limited purpose of pursuing higher studies for which he has been selected after receiving necessary proof for such selection and obtaining undertaking from him that after completing the said course, he would join duty and re-submit those documents and testimonials. The proof of compliance in that regard shall be filed with the Registrar (Judicial) by 20.05.2020.



It is made clear that the aforesaid interim arrangement shall not preclude the Respondents from independently taking a decision on the representation dated 01.05.2020 made the Petitioner on merits and in accordance with law and inform the outcome to the Court for passing further orders.

8. Post the Writ Petition for filing Counter-Affidavit by the Respondents on 28.05.2020."

3. When the matter is called today, the Learned Additional Government Pleader on instructions states that the original certificates of the Petitioner have been returned to him in compliance of the aforesaid order dated 18.10.2019 passed by this Court. It is further brought to notice that the Government of Tamil Nadu issued G.O. (Ms.) No. 185 Health and Family Welfare (MCA-1) Department dated 13.04.2020 stating as follows:-

"4. The Government have examined the proposal of the Director of Medical Education and decided to accept the same. Accordingly, the Government do hereby issue orders to the Director of Medical Education as detailed below:-

- (i) to permit the Non service Post Graduate candidates who have completed their Broad Speciality (MD / MS / Diploma) Course in State of Tamil Nadu (not completed their bond condition) and have selected for Higher Speciality courses through entrance examination (either / neither NEET-SS) in other State / Private self-financing / Deemed University to pursue the Higher Speciality course after obtaining the Bank Guarantee equivalent to the bond amount as prescribed in the respective year prospectus during the admission to Broad speciality courses from the academic year 2016-2017.
- (ii) To permit the Non service Post Graduate candidates who have completed their Higher Speciality (DM/M.Ch.) Course in State of Tamil Nadu (not completed their bond condition) and have selected for Fellowship course through entrance examination (either / neither NEET-SS) in other State / Private self-financing / Deemed University to pursue the Fellowship course after obtaining the Bank Guarantee equivalent to the bond amount as prescribed in the respective year prospectus during the admission to Higher speciality courses from the academic year 2016-2017."

It emerges from the aforesaid Government Order that it has been decided to permit the medical practitioners, who have not yet completed the period of compulsory service under the bond executed by them to pursue higher studies on condition that they shall furnish bank guarantee equivalent to the bond amount for the period of course of higher studies and their original documents would be returned for that limited period on the understanding that they would re-submit them on reporting for duty and complete the required period of compulsory service.



4. Though the Petitioner would be entitled for the aforesaid benefit now conferred by the Respondents, Learned Counsel for the Petitioner submits that in view of the fact the Petitioner has already remitted the entire bond amount of Rs.20,00,000/- by way of fixed deposit in favour of the Registrar (Judicial) of this Court to the credit of this Writ Petition, the Petitioner may be permitted to report duty after completing the higher studies, without furnishing any bank guarantee to the Respondents.

5. Having regard to the aforesaid submissions made by the Learned Counsel on both sides, it is appropriate to pass the following orders:-

- (i) When the Petitioner reports for duty after completing his higher studies, the Respondents shall issue posting order to him and on the Petitioner re-submitting the original certificates to the concerned authorities, he shall be entitled to apply to this Court for refund of the amount deposited with accrued interest.
- (ii) In the event of the Petitioner failing to report duty after completion of the said course, it is open to the Respondents to apply to this Court for en-cashing the amount in fixed deposit with accrued interest for non-compliance of the conditions of the bond executed by him.

6. Accordingly, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

1. The Director of Medical Education,
EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.

2. The Dean,
Madurai Medical College,
Madurai-625 020.



W.P. (MD) No. 6145 of 2020

Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

W.P. (MD) No. 6145 of 2020
01.06.2020

VB(04.06.2020) 6P 4C