



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 6772 of 2020

and

W.M.P. (MD) Nos. 6156, 6158 and 6159 of 2020

(Through Video Conferencing)

WEB COPY

Dr. S.Anusha

: Petitioner

vs.

1. The Director of Medical and Health Services,
Teynampet,
Chennai.

2. The Director of Medical Education,
Kilpauk,
Chennai.

3. The Dean,
Madurai Medical College,
Madurai.

4. The Kovai Medical Centre,
Avinashi Road,
Coimbatore - 14.

: Respondents

Prayer: The Writ Petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 2nd respondent in proceeding in R.Dis.No.092905/MEII(1)/2019 dated 18.05.2020 and quash the same and consequently, direct the respondent to permit the petitioner to join and undergo the DNB (speciality in Pediatrics course) for the admission in the year of 2020 in the 4th respondent college with the undertaking affidavit and bond for rendering service under the respondents 1 and 2 after completion of the Higher speciality course of the petitioner.

For Petitioner

: Mr. Veera Kathiravan

Senior Counsel for

M/s. Veera Associates

For Respondents 1 to 3

: Mr. Aayiram K.Selvakumar

Additional Government Pleader

O R D E R

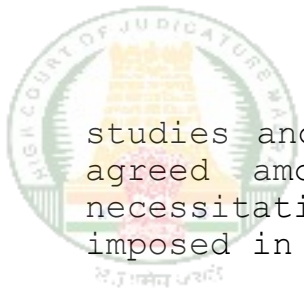
Heard Mr. Veera Kathiravan, Learned Senior Counsel for the Petitioner and Mr. Aayiram K.Selvakumar, Learned Additional Government Pleader appearing for the First to Third Respondents and



perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a medical practitioner, had undergone Post-Graduate Diploma in Child Health (DCH) during the academic years 2016 - 2018 in the college of the Third Respondent and had executed a bond agreeing for compulsory service of not less than two years in Government after completing the course or pay Rs.20,00,000/- as compensation in lieu thereof in terms of the prospectus issued in that regard. According to the Petitioner, though she was willing to carry out that obligation, she was not issued any posting order after completing that course. It is contended that she had applied for further studies in DNB (Post Diploma) conducted by National Board of Examinations, New Delhi in January 2020 session and has been selected for speciality in Pediatrics in the Fourth Respondent, viz., Kovai Medical Centre, Coimbatore. The Petitioner claims to have made a representation dated 05.06.2020 by e-mail to the Third Respondent to release her original documents for pursuing higher studies, in which she has been selected now. In the meanwhile, the Second Respondent by proceedings R.Dis. No. 092905/MEII(1)/2019 dated 18.05.2020 had informed the Third Respondent that in G.O. (Ms.) No. 185 Health and Family Welfare (MCA-1) Department dated 13.04.2020 issued by the Government of Tamil Nadu, Non-Service Post Graduate candidates, like the Petitioner, who have completed their period of compulsory service under the bond condition executed by them could be permitted to pursue higher studies on condition that they should furnish bank guarantee equivalent to the bond amount for the period of course of higher studies. Aggrieved by the aforesaid condition imposed, the Petitioner has filed this Writ Petition challenging the aforesaid order dated 18.05.2020 passed by the Second Respondent and for consequential direction for permitting the Petitioner to join and undergo the DNB course (speciality in pediatrics) in the year of 2020 in the college of the Fourth Respondent with the undertaking affidavit and bond for rendering service under the First and Second Respondents after completion of the Higher Speciality course.

3. Learned Additional Government Pleader appearing for the First to Third Respondents, on instructions, submits that after the Petitioner completed Post-Graduate Diploma in Child Health (DCH), she was instructed by order Ref No. 1709/ME4 & ME5/2016 dated 26.05.2018 passed by the Third Respondent to report before the Director of Public Health and Preventive Medicine, Chennai, for further posting, receipt of which she has acknowledged, but despite the same, she did not comply with that requirement. It is highlighted that though during the previous years, the original documents had been returned to the respective candidates to pursue higher studies without any condition on their mere undertaking, the past experience has been that those candidates have deceived the Government by not reporting for duty after completing the higher



studies and it has been practically impossible to even recover the agreed amount of compensation from them and it is in these necessitating circumstances that the aforesaid condition has been imposed in public interest, which cannot be faulted.

4. Though it is vociferously asserted by the Learned Senior Counsel appearing for the Petitioner that the Petitioner had reported for duty before the First Respondent but she was not given any posting order, it is not possible to believe the said contention in the absence of any substantiating materials produced by the Petitioner to show that she was ready and willing to carry out her obligation to serve for the required period of compulsory service of two years after completing the earlier course of study that she had undergone at subsidized cost borne from the Public Exchequer. In this context, it must be recapitulated here 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 14, 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. The said compensation amount is itself only reimbursement of genuine pre-estimate of loss incurred by the State by spending on the persons, like the Petitioner, with the expectation that the beneficiaries of the specialised knowledge gained out of public funds should after completion of the courses of study utilize the skills they acquire during the training for serving the cause of the sick, the poor and the needy in the State for a substantial period and that too, for commensurate remuneration.

5. It is the fervent plea of the Petitioner in this case that she is still willing to serve the Government for the agreed period in the bond, but after completing her higher studies for which she has been now selected, and has sought for return of her original documents, which are now in the custody of the Third Respondent, without furnishing bank guarantee for the bond amount.

6. The Government of Tamil Nadu has issued G.O. (Ms.) No. 185
<https://hcservices.ecourts.gov.in/hcservices/>



Health and Family Welfare (MCA-1) Department dated 13.04.2020, which reads 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. In other words, the aforesaid condition to furnish bank guarantee for that bond amount had been introduced by the Government of Tamil Nadu only by way of concession and if the Petitioner is not willing to furnish the bank guarantee, it would mean that the Petitioner cannot be permitted to pursue the course of higher study for which she has been selected without completing the period of compulsory service or remitting the compensation amount of Rs.20,00,000/- in lieu thereof agreed earlier, as upheld in the aforesaid binding decision of the Hon'ble Supreme Court of India. That apart, the order R.Dis. No.092905/MEII (1)/2019 dated 18.05.2020 passed by the Second Respondent, which is impugned in the Writ Petition, is only a consequential proceeding to implement the decision of the Government of Tamil Nadu in G.O. (Ms.)

No. 185 Health and Family Welfare (MCA-1) Department dated



13.04.2020, which the Petitioner has not questioned and in any event, does not suffer from any infirmity so as to invalidate the same.

7. Viewed from that perspective, there does not appear to be any justification to interfere with the impugned order R.Dis. No.092905/MEII(1)/2019 dated 18.05.2020 passed by the Second Respondent. If the Petitioner intends to pursue the course of higher study before completing the period of compulsory service as per the bond condition, she would have to necessarily furnish the bank guarantee for the required amount during the period of that course and then seek the return of the original documents on the undertaking that she would re-submit the same and report for duty after completing the higher course of study, and no exception can be taken to that requirement which is an adequate safeguard to ensure its compliance in an effective manner.

8. It is also not possible to accept the contention made on behalf of the Petitioner that the onerous requirement to furnish bank guarantee by non-service candidates is discriminatory, as no such condition has been imposed for service candidates. There already exists jural relationship of employer and employee between the Government and the service candidates, and without obtaining prior permission from the Government, it would not be possible for the service candidates to join any higher course of study and they also cannot get any valid employment elsewhere without obtaining relieving order from the Government. As such, unlike the case of non-service candidates, the requirement to obtain bank guarantee for the service candidates to ensure that they report for duty after completing higher studies, does not arise.

9. Learned Senior Counsel for the Petitioner finally submitted that the Petitioner is now willing to serve in the Fourth Respondent till her course for higher studies in that institution commences. Suffice to observe here that if such representation is made by the Petitioner, it is for the concerned authority to duly consider the same on merits and in accordance with law.

10. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petitions are closed. No costs.

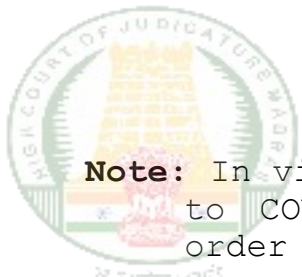
Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Director of Medical and Health Services,
Teynampet,
Chennai.
2. The Director of Medical Education,
Kilpauk,
Chennai.
3. The Dean,
Madurai Medical College,
Madurai.

W.P. (MD) No. 6772 of 2020
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