



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2020

CORAM :

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P. (MD)No.7061 of 2020

and

W.M.P. (MD) .No.6498 of 2020

(Through Video Conferencing)

WEB COPY

Dr.R.Elanthendral

... Petitioner

Vs.

1.Principal Secretary to Government

of Tamil Nadu,

Health and Family Welfare Department,

Secretariat,

Chennai.

2.Director of Medical Education,

Chennai.

3.Director of Medical and Rural Health Services,

Chennai.

4.Dean,

Thanjavur Medical College,

Thanjavur.

5.Dr.Mehta's Hospitals,

No.2, Mc. Nichols Road,

Chetpat, Chennai.

... Respondents

PRAYER: Writ 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 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 Post Diploma course.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.Aayiram K.Selvakumar
1 to 3 Additional Government Pleader



ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3.

2. This Writ Petition has been filed for Writ of Certiorarified Mandamus, 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 Post Diploma course.

3. The petitioner completed M.B.B.S in the year 2016 and joined the Government Medical College Hospital, Thanjavur to pursue the Diploma in Child Health. After completing the course, the petitioner was appointed as an Assistant Surgeon in Aavudaiyarkoil Government Hospital in December 2019.

4. As per the prospectus for the aforesaid course, the petitioner was required to execute a bond for a sum of Rs.20,00,000/- in the prescribed format. In the event, the petitioner fails to join the Medical Service required by respondent or discontinues service with the respondent, the petitioner was required to not only pay a Rs.20,00,000/- to the respondent but also repay the stipend received by the petitioner.

5. The petitioner has paid a nominal sum of Rs.20,000/- as tuition fees per annum. The reasons for levying nominal fee of Rs.20,000/- per annum as per the prospectus is as follows:-

XI. STIPEND AND SECURITY AMOUNT:

37 (a) All Non Service candidates selected will be paid stipend as per the Government Orders in force for the Government Medical Colleges: in respect of self financing Medical Colleges and Rajah Muthaiah Medical College (Annamalai University) as per the norms of the institution concerned.

(b) Service Candidates will be paid salary as per the Government Orders in force.

(c) The Government of Tamil Nadu is offering Post Graduate Medical Education through its 14 Medical Colleges / Hospitals and Specialised institutes. **The Government spends a large amount of money to impart Medical Education including Post-Graduate Medical Education. It levies nominal fees and at the same time**



provides stipend to Private candidates and salary to Service candidates. It is natural that the Government desires to ensure that these seats are not wasted. Further, the Government looks forward to these Doctors who have undergone Post-Graduate training to serve the poor and the needy of this country at large and this State in particular. The public have the right to expect the Specialists to utilize the skills they acquired during their training for the benefit of the sick, the poor and the needy. To ensure that the services of trained Post Graduate Doctors are made available, an Undertaking is obtained from them at the time of their admission. It is sincerely, believed that this will discourage an attitude of not paying attention to those poor people at whose expense they have been educated.

6. As per the prospectus, a non-service candidate is enjoined to execute a bond as per annexure VII which is to lapse at the expiry of two years of completion of the course. Relevant portion from the prospectus reads as under:-

(h) Non-Service candidates including candidates selected through 50% All India Quota shall execute a bond **with three sureties** for a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) on admission to Post Graduate Diploma courses 2017-2018 session and ~ 40,00,000/- (Rupees Forty Lakhs only) on admission to Post Graduate Degree courses 2017-2018 session with an undertaking that they shall serve the Government of Tamil Nadu for a period of **not less than two years, in the posting issued by Government**, if required. During the above period, they will be paid a salary on par with the fresh recruits of the Government of Tamil Nadu Medical Services. The Government of Tamil Nadu will reckon their services within a period of 2 years from the date of completion of their Postgraduate Degree/ Diploma Course Two sureties should be permanent. Government servants in **the same or higher rank than the candidate**. One surety should be the **spouse/ parent of the candidate**. **PAN numbers of the sureties should be furnished**. The prescribed form of bond is enclosed in annexure VIII. The bond will become in fructuous if he/she serves the State Government of Tamil Nadu if required for minimum period of 2 years.

If non-service candidates discontinue the course they have to pay the total amount of penalty and the stipend received

<https://hcservices.eco.in/govtindia> For any reason, if the candidate is unable to serve



the Government for the above said period. original certificates are retained by Government. The bond amount paid by the candidate in total has to be credited to the relevant Head of Account as per Government rules in force.

(j) The Security bonds are governed by clause (c) under exemption under article 57 of Schedule - I of the Indian Stamp Act of 1879. (Central Act 11 of 1879). Hence the Security Bonds executed need not be stamped.

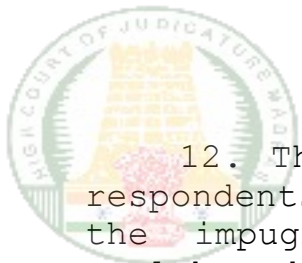
7. The petitioner completed the course some time in July-August 2017. Meanwhile, during December 2019, the petitioner appeared in the National Board of Examination Super Specialty Post Diploma Centralised Entrance Test to pursue Post Diploma course in Peadiatrics. The result was published in January 2020. The petitioner has ranked No.28 and thus now wants to pursue the course with the 5th respondent Hospital.

8. Since the petitioner has not paid the bond amount and refunded the stipend, the original certificates of the petitioner cannot be returned to the petitioner. Meanwhile, impugned G.O.Ms.No.185, Health and Family Welfare (MCA1) Department, dated 13.04.2020 has been issued which mandates the person like petitioner to furnish bank guarantee in lieu of payment of Rs.20,00,000/-.

9. The learned counsel for the petitioner submits that the petitioner comes from a middle class family and the father of the petitioner is a Government servant having five years service and he is already servicing home loan. It is therefore submitted that it is not possible for the petitioner to furnish the bank guarantee of Rs20,00,000/-.

10. The learned counsel for the petitioner submits that the petitioner will execute a bond and rejoin the services with the respondent after completion of the P.G Diploma course. It is submitted that last date for submitting the required documents and certificates and fees is 05.08.2020 and since all the documents are with the respondents, the petitioner is unable to produce the same for pursuing higher studies. In case the petitioner is unable to furnish the same by the said date, the petitioner will loose the opportunity to pursue the P.G. Diploma course.

11. The petitioner has challenged the conditions of the impugned notification mainly on the ground that the condition for furnishing bank guarantee was not there when the petitioner had joined the course in 2017. It is therefore submitted that the said clause cannot be applied to the petitioner.



12. The learned Special Government Pleader appearing for the respondents submits that the Government of Tamil Nadu has issued the impugned notification dated 13.04.2020 in G.O.Ms.No.185, Health and Family Welfare (MCA1) Department.

13. The learned Special Government Pleader submits that the impugned G.O has been issued to ensure that the persons like petitioner do not breach the conditions of the bond executed by them and if they are opting out of service of the Government during the bond period, they ought to have furnish a security to the Government in the form of bank guarantee.

14. He further submits that the experience has shown that the bond remains unenforceable as the persons like petitioner do not offer themselves after completing course and it is to sternly deal with the breaches committed, the impugned G.O was issued.

15. The learned Additional Government Pleader for the respondents submits that this issue has already considered by this Court in the following decisions.:-

- i. **Dr.Susan Jacob Vs. State of Tamil Nadu and Others**, order dated 07.05.2020 passed in W.P.(MD).No.6133 of 2020.
- ii. **Dr.G.Gowthaman Vs. The Joint Director and Others**, order dated 01.06.2020 passed in W.P.No.2377 of 2020.
- iii. **Dr.S.Anusha Vs. The Director of Medical and Health Services and others**, order dated 25.06.2020 passed in W.P.(MD).No.6772 of 2020.
- iv. **Dr.K.Gautham Vs. The Director of Medical Education and others**, order dated 01.06.2020 passed in W.P.(MD).No.6145 of 2020.
- v. **Dr.C.Dharshan and others Vs. State of Tamil Nadu and others**, order dated 01.06.2020 passed in W.P.No.30144 of 2019 and batch.

16. The learned counsel for the respondent further submits that the impugned notification is in terms of the decision of the Hon'ble Suprme Court in **Assn. Of Medical Super Specialty Aspirants & Residents Vs. Union of India**, (2019) 8 SCC 607. He further submits that the Hon'ble Supreme Court has considered the issue and upheld the conditions of the Government in asking the parties to execute bond or bank guarantee. He invited the attention of this Court to paragraph 40, whereas it has been held that all the doctors who have executed compulsory bonds are bound by the conditions contained therein. Therefore this Writ Petition is liable to be dismissed.



17. Though the petitioner has prayed for Writ of Certiorari and Mandamus to quash the impugned G.O and for the consequential direction, I am not inclined to interfere with the impugned G.O in this Writ Petition except to the extent of granting limited relief to the petitioner by directing the petitioner and/or her father to furnish the adequate security instead of the bank guarantee in terms of paragraph No.4(1) of the impugned G.O considering the fact that the petitioner hails from middle class family and is unable to furnish a bank guarantee for sum of Rs.20,00,000/- in terms of the G.O. Taking into consideration of the hardship of the petitioner, I am inclined to pass the following orders:-

- i. The petitioner shall secure the interest of the respondent by furnishing post dated cheques favouring the Director of Medical Education, namely, the 2nd respondent towards the stipend paid and 50% of the bond amount and the stipend amount paid to her as the petitioner has worked for a period of seven months since December 2019.
- ii. The petitioner and/or her father shall also furnish a post dated cheques for a total amount of Rs.10,00,000/- and for the consolidated stipend amount paid to the petitioner for being presented at the end of 25th month in case the petitioner fails to re-join the service.
- iii. The petitioner and/or her father are also directed to furnish 24 post dated cheques for a sum of Rs.15,000/- per month in favour Director of Medical Education, namely, the 2nd respondent. These cheques shall be presented and encashed by the respondents in time and kept in an interest bearing escrow account in a national bank.
- iv. If the petitioner complies with the above, the official respondents shall release the certificates forthwith.
- v. On completion of the course, the petitioner shall report to the 2nd respondent for being deployed in the Government Hospital of for a period of two years.
- vi. In the event the petitioner re-joins service of the official respondents, the amount encashed by the 2nd respondent Director of Medical Education



WEB COPY

W.P.(MD)No.7061 of 2020

shall refunded to the petitioner together with interest accrued thereon.

vii. In case the respondents are unable to accommodate the petitioner for want of vacancy, the respondents shall discharged the petitioner of all the liabilities and the amounts paid by the petitioner shall be refunded.

18. With the above directions, this Writ Petition stands disposed of. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Jen

To

1. Principal Secretary to Government
of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai.

2. Director of Medical Education,
Chennai.

3. Director of Medical and Rural Health Services,
Chennai.

4. Dean,
Thanjavur Medical College, Thanjavur.

5. Dr. Mehta's Hospitals,
No.2, Mc. Nichols Road,
Chetpat, Chennai.

W.P.(MD)No.7061 of 2020 and
W.M.P.(MD).No.6498 of 2020
03.07.2020

_KM (09.07.2020) 7P 6C