

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No.7070 of 2021

Dr.K.Kanmani Kiruba

...Petitioner

vs.

1. State of Tamil Nadu,
Rep by its Secretary,
Department of Health & Family Welfare,
Secretariat, Fort.St.George,
Chennai - 600 009.

2. Director of Medical Education,
Directorate of Medical Education,
156, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

3. Dean
Madras Medical College,
Chennai - 600 001.

...Respondents

Prayer

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd and 3rd respondent Authorities to return all original certificates of the petitioner that were submitted by her at the time of her admission to MD (Radio Diagnosis) course during the year 2015 at the 3rd respondent College along with her Post Graduation Certificates.

For Petitioner : Mr.R.Arumugam

For Respondents : Mr.E.Manoharan
Spl. Govt. Pleader

O R D E R

This writ petition has been filed to direct the 2nd and 3rd respondent Authorities to return all original certificates of the petitioner that were submitted by her at the time of her admission to MD (Radio Diagnosis) course during the year 2015 at the 3rd respondent College along with her Post Graduation Certificates.

2. The petitioner, who has completed MBBS degree course, intended to pursue her MD (Radio Diagnosis) Course in the third respondent College. She got admitted in the year 2015 and at the time of admission, she produced all the original certificates with the third respondent College. One of the conditions in the said course is that on successful completion of that course, the candidate is liable to serve Government of Tamil Nadu on request for a period of two years or else the candidate is liable to pay Rs.40,00,000/- if the candidate failed to serve the Government despite an offer of employment is made. The candidate has also to execute a bond with this condition, at the time of admission. The petitioner has successfully completed the Course as on 31/10/2018, but the State Government has not provided any employment as per the bond, but, at the same time the third respondent has not returned the original certificates even after the bond period of two years.

3. Mr.R.Arumugam, learned counsel appearing for the petitioner submitted that the petitioner is suffering without employment for the past two years, due to the arbitrary and discriminatory actions of the third respondent. The petitioner requires the abovesaid certificates and if the certificates are not produced by the third respondent, the petitioner may lose the opportunity of getting a job.

4. Mr.E.Manoharan, learned Special Government Pleader took notice for the respondents and would submit that as per clause 58 of the Prospectus, it is made clear that in all these Post Graduation Courses, the Government is spending huge money and therefore, this condition of serving for two years in Government is incorporated in the Prospectus itself and the candidates should also execute a bond to that effect that in case, if they fail to serve the Government for a period of two years as agreed, then they have to pay a sum of Rs.40 lakhs in lieu of that bond. He would further submit that this clause has also been challenged and the issue has already been settled by the Hon'ble Supreme Court and therefore, as per the above said bond executed by the petitioner, the original certificates of the petitioner had been detained.

5. The learned Special Government Pleader would further

submit that only depending upon the requirement and vacancy position, the Government is engaging the services of similarly placed candidates and in many such cases, the candidates have opted to continue the Government Service even after expiry of the bond period of 2 years considering the current pandemic situation and the necessity of their services and therefore, the welfare of the public at large also needs to be taken care.

6. This Court paid its attention to the rival submissions made and also perused the available records.

7. The petitioner was admitted for the Course in May 2015. She had completed the Course on May, 2018, but, the petitioner was not offered any employment by the State Government till today.

8. The respondents, without offering any employment for more than two years, are not entitled to retain the certificates of the petitioner by referring the bond executed by the petitioner.

9. The relevant Clause in the Prospectus itself clearly says 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". The words "if required" contained in the clause dilutes its strength. The clause further insists for reckoning of such service period from the date of completion of the course by the candidate. Therefore, reckoning of such period cannot be an eternal one and the candidates, after having waited for two long years, cannot be compelled to wait for any more number of years on the ground of their necessity which may arise at any later point of time by losing all their opportunities.

10. A similar issue was also dealt by this Court in W.P.No.16829 of 2020 and by following the order passed by a Division Bench in W.A.No.799 of 2019, this Court disposed of the Writ Petitions with a direction to the third respondent to return the original certificates considering the representation of the petitioners.

11. In W.A.No.799 of 2019 and batch, the State of Tamil Nadu and another vs. P.S.Sairam and others, the Division Bench of this Court decided the issue as under:-

"103. Our conclusions, therefore, are:

- I.
- II.
- III.
- IV.
- V.
- VI.

vii. The candidates who have not been offered appointment within the period of two years would be entitled to release of their certificates accordingly. We have, therefore, no option but to set aside the impugned judgment dated 1.10.2018, but with a direction that in the event the period of two years has passed by after the passing out of the candidates without any offer of employment, then, in that event, they are not bound by the terms of the bonds executed by them and are consequently entitled for return of certificates. It is further clarified that this period will have to be sorted out in respect of all the candidates together with the details of the offer of employment made to them. The State Government shall, accordingly, prepare a list of all such candidates within fifteen days from today and notify it with details, including the date of passing out; the status of the offer of employment or otherwise, as well as the date of expiry of two years, in order to avoid any confusion on this count."

12. In view of the above said order and the fact that the petitioner has not been offered with any employment for more than two years, this Court allows the Writ Petition, with a direction to the respondents, to return the original certificates of the petitioner, forthwith, on receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary,
State of Tamil Nadu,
Department of Health & Family Welfare,
Secretariat, Fort.St.George,
Chennai - 600 009.

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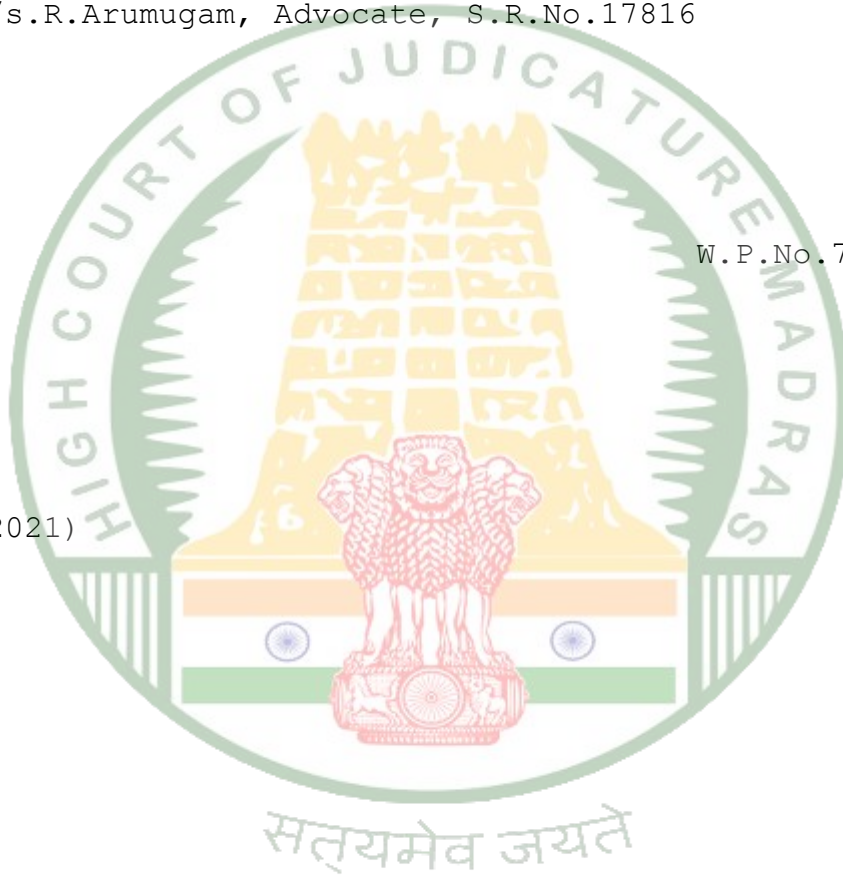
2. Director of Medical Education,
Directorate of Medical Education,
156, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

3. Dean
Madras Medical College,
Chennai - 600 001.

+1cc to M/s.R.Arumugam, Advocate, S.R.No.17816

W.P.No.7070 of 2021

SKY (CO)
RN (31/03/2021)



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