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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

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THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.2343 OF 2021

Dr.Priyadharshini A

.. Appellant/Petitioner

Vs

1. The State of Tamil Nadu
Rep. By its Secretary,
Department of Health & Family Welfare,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director,
Directorate of Medical Education,
156, Poonamallee High Road,
Kilpauk, Chennai - 600 010.
3. The Director,
Directorate of Public Health &
Preventive Medicine,
Chennai - 600 006.
4. The Dean
Madras Medical College,
Chennai - 600 003.

.. Respondents/Respondents

Appeal preferred under Clause 15 of Letters Patent against the order passed in W.P.No.16886 of 2021 dated 01.09.2021.

Prayer in W.P.No.16886 of 2021: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent's impugned Letter bearing NO. 54326 / ME2 / 1 / 2021 dated 20.07.2021 and quash the same as illegal and further direct the 4th respondent authority to return all original certificates of the Petitioner that were submitted by her at the time of her admission to MD(Microbiology) course during the year



2016 at the 4th Respondent college along with her original Post Graduation Certificates.

For Appellant : Mr.R.Arumugam

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

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JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 01 September 2021 recorded on W.P.No.16886 of 2021. This appeal is by the original writ petitioner.

2. Learned advocate for the appellant has submitted that, rejection of writ petition by learned Single Judge is erroneous, since the respondent authorities could not be permitted to sit over the certificates / testimonials of the appellant for non-joining of Government job as Doctor because the appellant had already offered her services discharging her obligation flowing from the bond, which she had given on completion of her medical course. It is submitted that, the State authorities might have issued appointment order but the same was never received by the appellant and according to him, as per record, it was even sent to the address where the appellant was not staying. It is submitted that this appeal be entertained.

3. On the other hand, learned Additional Government Pleader has vehemently opposed this appeal. It is submitted that though the appointment order was issued to the appellant, it is she, who projected that she has not received it and did not join the service. It is submitted that this deprived the State of availing her services as a Doctor, which not only the State needs but also entitled to. It is further submitted that, in the period in question, the State along with Nation faced two phases of covid pandemic, which further aggravates the situation and on that count also no interference be made by this Court. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

4.1 The appellant made a representation on 15.06.2021 to the respondent authorities asking them to return her original certificates, which were kept by them pursuant to the bond. The



said request was rejected through the letter dated 20.07.2021, which was the cause of action for filing writ petition.

4.2 It is not in dispute that the Director of Public Health and Preventive Medicine had issued appointment order to the appellant on 18 October 2019 along with so many other similarly situated Doctors. The said appointment order was sent to the appellant on 18 October 2019 itself and her name is shown at Sl.No.93 in the list of the appointees / Doctors to whom the appointment orders were issued. The copy thereof is marked to all the concerned authorities, including to the Director of Medical Education and the concerned Dean, i.e., the Dean, Madras Medical College, where the appellant had studied. The copies of these documents are on record. The appointment order also shows that the same was sent to the appellant at the address, which is on record as per the Registration Certificate issued by the Tamil Nadu Medical Council. The stand of the appellant is that, the Authorities might have issued and sent appointment order to her but she has not received it.

4.3 During the course of hearing, reliance is placed on the representation dated 23 January 2020, which reads as under:-

“ 23.01.2020
From
Dr.A.Priyadharshini M.D.(Microbiology),
No.75, F2, Mahalakshmi Apartment,
Mandapam Link Road,
Krishna Nagar,
Ullagaram, Chennai - 91.

To
The Director of Medical Education
No.156, PH Road, Kilpauk,
Chennai - 600 010.

Subject : Request for Issue of Posting order

Sir/Madam,

I completed my M.D.(microbiology) course on 31.05.2019 from Madras Medical College. As many of my friends who passed along with me have been issued with posting order immediately on completion of their course. I personally visited my college office during September 2019 and enquired the reason for delay caused to issue me a posting order as I was in dire need of job. I was told to



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contact you and when I personally contacted you, I was told that I will be issued with a posting order as and when the vacancy arises. Its been more than 4 months but still I haven't received any posting order and I am suffering without job (or) certificates. My family is in urgent need of financial aid. So, I humbly request your goodself to issue me a posting order immediately so as to enable me to join for the duty as early as possible which will serve as a great help financially to me and to my family.

I therefore request you to kindly arrange to issue a posting orders as soon as possible.

Thanking you,

Yours sincerely,
Sd-"

4.4 The above representation is claimed to have been duly received by the office and in token thereof, endorsement dated 27 January 2020 is also taken.

4.5 The picture which has emerged before us is that, though the concerned authority under the State, (Director of Public Health and Preventive Medicine) had issued appointment order on 18 October 2019, still on 23 January 2020, a show is made before the Director of Medical Education that the appellant is in dire need of job and she be provided with appointment order. She on her own stated in that representation that she was told that there is no vacancy and as and when the vacancy will be available, appointment order will be sent to her. This Court finds that, on the face of appointment order already having been issued months prior thereto by the authority under the same department of the Government (health department), the so-called representation of the appellant, if received is conveniently kept pending until the bond period is over. When the bond period was over, the appellant asked her documents back, which was responded by the Director of Medical Education vide order dated 20 July 2021. The operative part thereof reads as under:-

"The attention of Dr.A.Priyadharshini, MD (Microbiology), Non Service Post Graduate, Madras Medical College, Chennai is invited to the reference cited and it is informed that necessary appointment and posting order was issued by the appointing authority i.e., Director of Public Health and Preventive Medicine, Chennai vide R.No.61908/E5/A4/2019-DMS-289 dated 18.10.2019 to her



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but she has not joined duty in the posted place.

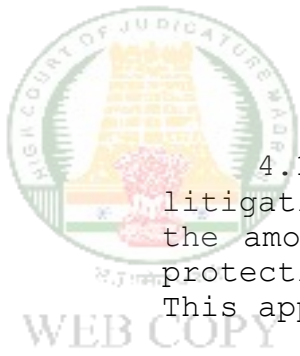
As per the conditions stipulated in the prospectus, she is directed to pay the bond amount of Rs.40,00,000/- (Rupees forty lakhs only) to the Dean, Madras Medical College, Chennai to release all the original certificates submitted at the time of admission. Failing which appropriate action will be initiated to recover the amount as per Revenue Recovery Act or report to DPH, Chennai for fresh postings to complete her 2 years of compulsory bond service."

4.6 Therefore, though the show is made to the effect that the appellant was not given appointment, the litigation before us has turned out whether she is under obligation to pay back Rs.40 lakhs to the Government or not. It is in this background, we have examined the order of learned Single Judge.

4.7 Learned Single Judge has rejected the petition where challenge is made to the order dated 20 July 2021. We find that, learned Single Judge can not be said to have fallen in any error so far rejection of the petition is concerned in the facts noted above. We further find that, since, the petition was filed by the Doctor, who ostensibly projected her readiness to serve the State, the alternate relief is granted by the learned Single Judge to the effect "there shall be a direction to the 3rd respondent to issue the appointment order to the petitioner within a period of one week from the date of receipt of a copy of this order" .

4.8 It is this direction which is under challenge by the writ petitioner, in whose favour the direction is to have appointment. Thus, the writ petitioner is aggrieved by the direction of learned Single Judge where the said direction is to the Director of Public Health and Public Medicine to give appointment to the writ petitioner. We find that the present appellant can not be granted any further relief. The relief which she claims is, that she will not join the Government Service as Doctor and go to serve the villagers but still she be not asked to pay her bond amount, which in this case is of Rs.40 lakhs and still her certificates be returned to her. This can not be granted.

4.9 Before starting dictation of this order, to test the bonafide of the appellant, it was once again inquired whether she is ready to appear before the Director of Public Health and Preventive Medicine, tomorrow, where she will be given appropriate appointment order, which is not responded positively by learned advocate for the appellant.



4.10 It is under these circumstances we find that, litigation before this Court is whether she is liable to refund the amount of Rs.40 lakhs to the State or not. We find that no protection needs to be granted to the appellant in that regard. This appeal therefore needs to be dismissed.

4.11 Learned advocate for the appellant has referred to various decisions of this Court and the Supreme Court in the case of (i) Bachhittar Singh v State of Punjab reported in AIR 1963 (SC) 395, (ii) Bipromasz Bipron Trading SA Vs. BEL reported in (2012) 6 SCC 384 and (iii) State of TN vs. P.S.Sairam & others made in W.A.No.799 of 2019 etc., which in the facts noted above, according to us, will not help the appellant.

5. It also needs to be noted that the representation dated 23 January 2020 and receipt thereof on 27 January 2020 are staring on the face of the authorities have led to a situation where, the Government, without availing the service of the appellant Doctor, has exposed itself to waive of Rs.40 lakhs. Whether this was simple negligence or some facilitation by some of the elements from within the system is an aspect, which needs to be gone into by appropriate authority. Under the circumstances, it is directed to the second respondent, (Secretary Health to the Government), to look into the matter and do needful to see to it that such things are not facilitated further. After due inquiry, appropriate action be taken against the erring officials.

6. With above observations and directions, this writ appeal is dismissed. Since the appellant is a professional Doctor, we have restrained from imposing any costs. Consequently, connected C.M.P.Nos. 14882 and 18087 of 2021 are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

ssm/6

To

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



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

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3. The Director,
Directorate of Public Health & Preventive Medicine,
Chennai - 600 006.

4. The Dean
Madras Medical College,
Chennai - 600 003.

+1cc to Mr.R.Arumugam, Advocate, S.R.No.62129

+1cc to the Government Pleader, S.R.No.62613

W.A.No.2343 of 2021

GSM(CO)
RLP(08/12/2021)