

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.20163 of 2020
and
W.M.P.No.24904 of 2020

M.Immaculate Jonna

... Petitioner

Vs.

1.The Secretary to the Government,
Health & Family Welfare Department,
St.George Fort, Chennai - 600 009.

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Principal,
Government Dental College,
Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 1st respondent dated 02.06.2020 in Ref.No.Health And Family Welfare Department letter No.10317/MCA1/2020-1 and quash the same.

For Petitioner

: Mr.B.Kumarasamy

For Respondents

: Mr.E.Manohar, Spl.G.P

ORDER

(This matter is taken up through Video Conferencing)

The petitioner, an aspirant for M.B.B.S course appeared in the NEET Examination and obtained an All India Rank 56. She also appeared for All India Institute of Medical Sciences Examination and got 11th rank. Normally, the AIIMS results are declared during the month of May. However, it was delayed due to the Fani Cyclone struck the State of Orissa. In the meantime, the

petitioner has participated in the Tamil Nadu State Counseling and was allotted MDS in Department of Conservative Dentistry and Endodontics in Tamil Nadu Government Dental College (GDC). Without knowing the result of the AIIMS, the petitioner joined the Tamil Nadu Government Dental College (GDC) on 05.04.2019 and deposited her original certificates and also paid the tuition fee and college fee.

2.The petitioner was also offered a seat for PG Course at AIIMS based on the result and she was also allotted a seat in MDS in Department of Conservative Dentistry and Endodontics in Tamil Nadu Government Dental College (GDC), New Delhi. When she approached the Tamil Nadu Dental College for discontinuing her studies and asked for original certificates, she was asked to pay a sum of Rs.15,00,000/- towards discontinuation fee. Due to the delayed announcement of results by AIIMS and due to the Fani cyclone, the petitioner was slapped with a discontinuation fees.

3.The petitioner approached this Court as against Clause 22 (C) of the Prospectus which imposes of Rs.15,00,000/-, if any candidate discontinues from the course. This Court by order dated 16.07.2019 disposed of the writ petition with a direction to the Government to take a decision on her representation and also permitted the petitioner to get back original certificates by executing indemnity bond for Rs.15,00,000/- that if the Government decline her waiver of penalty she will pay the money without further protest within a period of 3 months. Accordingly, the petitioner has also executed an indemnity bond to pay the discontinuance fees as per the Clause 22(C) of the prospectus in the event of Government declining the request of the petitioner for waiver of penalty.

4.The case of the petitioner was also considered by the Government as per the guidelines issued by the Medical Council of India and rejected her request to waive the discontinuance amount as not feasible for compliance. Accordingly, the Director of Medical Education by his communication dated 07.08.2020 directed the petitioner to pay the discontinuation amount of Rs.15,00,000/- within a period of 3 months as per the prospectus of PG Course 2019-2020.

5.Aggrieved over this order, this writ petition is filed stating that the respondent rejected the petitioner's claim for waiver without considering her representation on merits. Mr.B.Kumarasamy, learned counsel for the petitioner by referring the earlier orders passed by this Court in W.P.No.20306 of 2019 submits that this Court considering the grounds in favour of this petitioner has observed in the earlier order that the petitioner has made some cause for non discontinuation before 31.05.2019, directed the respondent to consider the case of the petitioner but the respondent without considering the merit of the petitioner's representation, rejected the petitioner request by way of impugned non speaking order.

6.Mr.E.Manoharan, learned Special Government Pleader by relying on Clause 22(C) of the prospectus issued by the Government of Tamil Nadu for admission of MDS Course submits that the discontinuation fees is very much mentioned in the prospectus and by discontinuing after the cut off date for the admission of MBBS course, the prospectus of another candidate is effected and therefore the petitioner is liable to pay the discontinuation fee. This Court also directed the petitioner to execute an indemnity bond that in case of rejection, the petitioner would indemnify the amount without agitating further. As per the orders of the Court, this petitioner has also executed an indemnity bond and again agitating the order of rejection by this writ petition.

7.Mr.E.Manohar, learned Special Government Pleader has also relied on the orders of this Court in W.P.No.3377 of 2020 reported in (2010) 4 MLJ 656 in the case of Dr.N.Sivakumar Vs. The Secretary, Selection Committee & another dated 25.03.2010, wherein this Court has held that the petitioner therein having applied for admission as per the prospectus, is bound by the prospectus.

8.Considering the rival submissions made, this Court is not inclined to entertain this Writ Petition. The prospectus is not only binding on the petitioner, it binds on all the persons concerned as laid down by the Hon'ble Supreme Court of India in above judgment. This condition of discontinuation fee is very much mentioned in the prospectus. Knowing the same, the petitioner has applied for the course, joined the course and thereafter discontinued. Therefore, she is liable to pay the discontinuation fees as per the Clause 22(C) of the prospectus. Further, considering the request made by the learned counsel for the petitioner, that the petitioner is not having sufficient means to pay this huge amount within stipulated time, this Court is inclined to permit the petitioner to pay this discontinuance fees on 6 equal monthly installments.

9.With the above directions, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

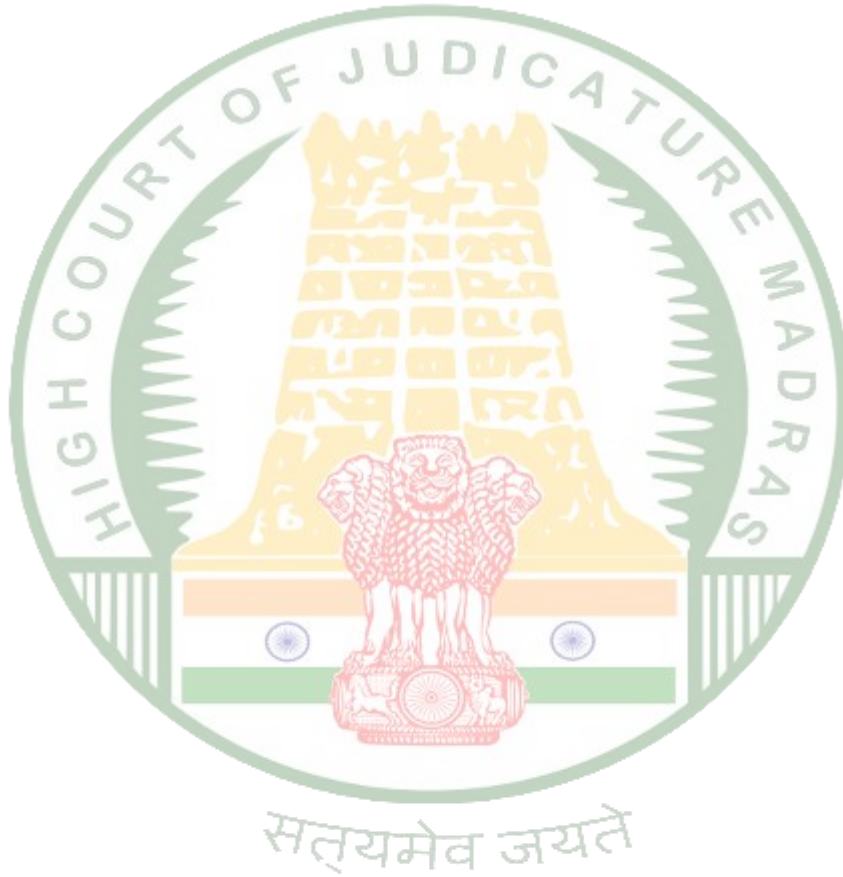
//True Copy//

Sub Assistant Registrar

mrm

To

- 1.The Secretary to the Government,
Health & Family Welfare Department,
St.George Fort, Chennai - 600 009.
- 2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.The Principal,
Government Dental College,
Chennai.



WEB COPY

To

1.The Secretary to the Government,
Health & Family Welfare Department,
St.George Fort, Chennai - 600 009.

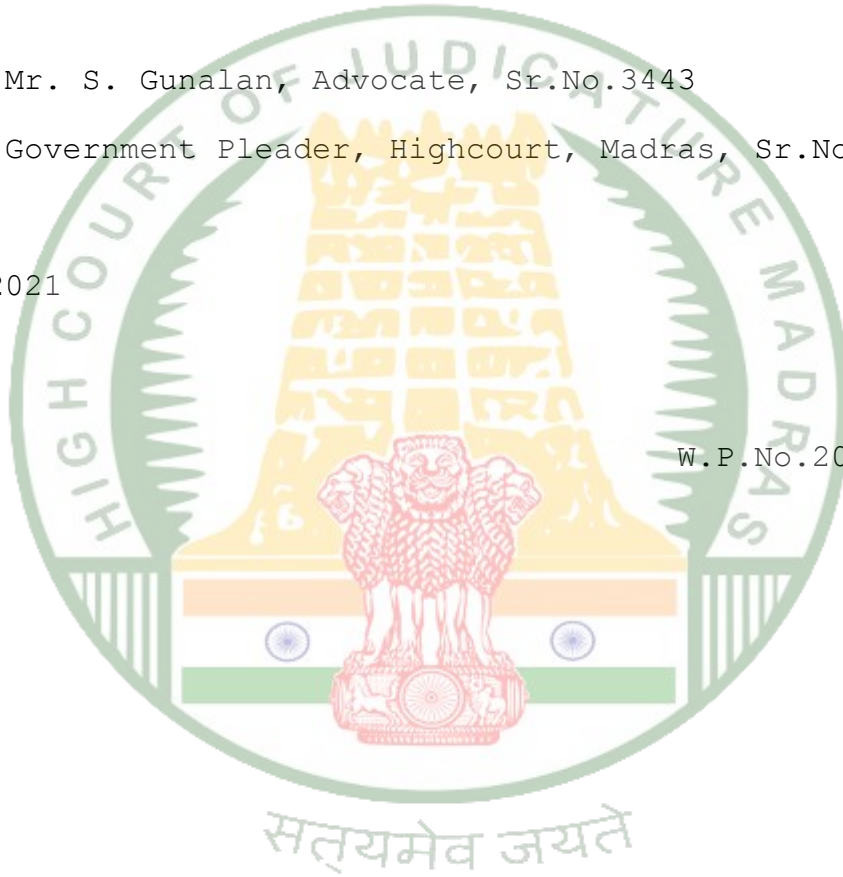
2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

3.The Principal,
Government Dental College,
Chennai.

+ 1 CC.to Mr. S. Gunalan, Advocate, Sr.No.3443

+ 1 CC.to Government Pleader, Highcourt, Madras, Sr.No.3578

AD(CO)
SM/08/03/2021



W.P.No.20163 of 2020

WEB COPY