

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.1.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.20380 of 2020

Dr.Mahesh Chand Bairwa

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 (DME)
Directorate of Medical Education,
156, Poonamallee High Road,
Kilpauk, Chennai 600 010.

3. Dean,
Thanjavur Medical College,
Thanjavur .

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 2nd and 3rd respondent authorities to return all original certificates of the petitioner that were submitted by him at the time of his admission to MS (Orthopaedics) course on 30th May 2015 at the 3rd respondent college together with the petitioner's original Post Graduation i.e., MS (Orthopaedics) Certificates.

For Petitioner : Mr.R.Arumugam

For Respondents: Mr.E.Manoharan,
Special Government Pleader

ORDER

This writ petition is filed for a mandamus directing respondents 2 and 3 to return the petitioner's original certificates that were submitted by him at the time of admission to MS (Orthopaedics) during May 2015 at the third respondent college together with petitioner's original Post Graduation i.e., MS (Orthopaedics) Certificates.

2. The petitioner, who completed MBBS degree course, intended to pursue a post graduation course in MS (Orthopaedics) conducted by the 2nd respondent as a non service candidate. He also got admitted in the year 2015 and at the time of admission, He produced all the original certificates with the respondent. 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 lakhs if the candidate failed to serve the Government despite an offer of employment is made. The candidates have also to execute a bond with this condition which is very much incorporated under clause 56(g) of the Prospectus of the Course. The petitioner has also executed a bond on 11.8.2015 at the time of admission. The petitioner successfully completed the Post Graduation Course as on 30.10.2018, 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 in addition to the above submissions made, has also referred to an interview called for by the Rajasthan Medical Education Society dated 31.12.2020 and for appearing the same, the petitioner requires the abovesaid certificates and if the certificates are not produced by the petitioner, the petitioner may lose the opportunity of getting a job.

4. Mr.E.Manoharan, learning Special Government Pleader took notice for the respondents and filed written instructions provided to him in this regard. He would submit that as per clause 56(g) 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 has 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 consequent 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 Post Graduation Course in May 2015 and executed the bond on 11.8.2015. He also completed his Post Graduation Course on 30.10.2018, 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 petitioners by referring the bond executed by the petitioner.

9. Clause 56(5) of the Prospectus of the Course 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.

104. 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 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(CS)

//True Copy//

Sub Assistant Registrar

ssk.
To

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 (DME)
Directorate of Medical Education,
156, Poonamallee High Road,
Kilpauk, Chennai 600 010.

3. Dean,
Thanjavur Medical College,
Thanjavur.

+1cc to Mr.R.Arumugam, Advocate SR.No. 4447

W.P.No.20380 of 2020

A.SK(02.02.2021).



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