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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.08.2021

+ **W.P.(C) 2109/2021 & CM APPL. 6152-53/2021 & CM APPL. 10302/2021**

DR. ARJUN SAILI

..... Petitioner

Through: Ms. Kajal Chandra, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Leena Tuteja, Sr. Panel
Counsel for the respondents.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The hearing has been conducted through video conferencing.

1. This petition has been filed by the petitioner seeking a direction to the respondent nos. 1 and 2 to return the original documents of the petitioner that were submitted with them by the petitioner at the time of his admission as a Post Graduate Trainee in MD (Anesthesia) at the Army Hospital (R&R).
2. The petitioner further prayed for an order directing the respondents to withdraw and cancel the Surety Bond dated 28.06.2014 executed by the petitioner.

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W.P.(C) 2109/2021

Page 1 of 10

3. By a subsequent application, being CM No. 10302 of 2021, the petitioner sought to add yet another prayer to the petition by seeking quashing of the letter dated 17.05.2018 issued by the respondent no. 2 that directed the petitioner to pay the cost of training from the date of his joining as MD (Anesthesia) till the date the petitioner was declared medically unfit, that is, an amount of Rs. 25,93,890/- (Rupees twenty-five lakhs ninety-three thousand eight hundred ninety).

4. The learned counsel for the petitioner submits that she confines her prayer in the present petition only to the prayer seeking the return of the original documents that were submitted by the petitioner at the time of his admission.

5. The petitioner had appeared in the All India Post Graduate Medical Entrance Examination (AIPGMEE) and was selected for admission (Priority V candidate) as a Post Graduate Trainee in MD (Anesthesia) as a stipendiary candidate at AIPGMEE counselling (Extended), conducted by the respondent no. 1 on 20.06.2014.

6. The petitioner, on selection, was issued an admission offer dated 21.06.2014, which *inter alia* required the petitioner to execute a notarised bond agreement to serve as a Short Service Commission Officer (SSC service) for five years with the Armed Forces Medical Services or pay an amount of Rs. 25 lakhs to the Government of India, if unwilling to join upon the successful completion of the course. The petitioner was also to submit all original certificates, to be kept in the custody of the Academic Cell, Army Hospital (R&R), Delhi Cantt., till

the completion of the course. The relevant terms of the offer letter are reproduced hereinbelow:

“4. You are required to execute a notarized bond agreement by 27 Jun 2014 to serve as Short Service Commission Officers (SSC service) for 5 years with the Armed Forces Medical Services or pay an amount of Rs.25 Lakh to Govt. of India, if unwilling to join on successful completion of the course.

5. You will have to submit all Original Certificates which will be kept in the custody of Academic cell, Army Hospital (R&R), Delhi Cantt till completion of your course.”

7. In due compliance with the above stipulation, the petitioner executed a Surety Bond dated 28.06.2014, the terms and conditions of which are reproduced hereinbelow:

“1. KNOW ALL MEN BY THESE PRESENT (1) I, Dr Arjun Saili s/o Dr Arvind Saili resident of 963, Vikas Kunj New Delhi 110018, hereinafter called the PG Student (which expression shall include his/her heirs, executors, administrators and representatives) Dr. Arti Devgon daughter of Air Cmde (Retd) Shri O.P Devgon resident of 963 Vikas Kunj New Delhi 110018, at present employed as Chief Medical Officer Central Health Services (CGHS) New Delhi, hereinafter called the 'Surety' (which expression shall include his heirs, executors, administrators and representative) are jointly and severally held and firmly bound into the president of India-hereinafter called the Government' in the terms and conditions for admission to postgraduate course at Army Hospital R & R, Delhi (Name of the Institution) Stated hereinafter and expenses that may have been incurred By occasioned to the

Government be paid to the Government for which payment to be will and truly made we hereby bind ourselves, our heirs executors, administrators and representative few firmly by these presents as witness our hands this 28th day of June 2014.

2 And whereas the PG Student has undertaken to join and continue post graduate studies in accordance with rules and regulations of the University of Delhi/Army hospital R & R , DELHI for obtaining in MD in Anaesthesia of the University of Delhi and join the Armed Forces Medical Services as a short service commissioned officer on successful completion of the course if found medically fit for the same. And whereas in consideration of the government having agreed to sanction the admission to the said PG Student, the Ophthalmology of the University of Delhi and join the Armed Forces Medical Services as a short service commissioned officer on successful completion of the course if found medically fit for the same. And whereas in consideration of the government having agreed to sanction the admission to the said PG Student, the Candidate along with the surety has agreed to executed the above bond with such conditions as hereunder written.

(a) That in consideration of the PG Student being admitted by the Govt to Army hospital, R& R, Delhi for the purpose of obtaining PG degree the PG Student and surety covenant with the Government that the said PG Student will attend the Army hospital R& R, Delhi For obtaining PG Degree and such other training as Government may determine from time to time for the prescribed period until he/she successfully completes his/her PG degree course and is declare fit(As to which the decision of Director Genera

(b) That in the event of the PG student refusing to accept commission in the Armed Forces

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W.P.(C) 2109/2021

Page 4 of 10

Medical Services on successful completion of his/her PG degree course, the PG Student and the Surety shall jointly be liable to pay and refund forthwith to the Government of India on demand and without demur in cash an amount of Rupees Twenty Five Lacs as per GOI letter No. PCIII/17436/DGAFMS/DGID/1819/13)(a)D(Medical) dated 15 January 2014.

(c) That the PG Student shall on Successful completion of his/ her PG Degree Course will report within such period as may be allowed by the Director General Armed Forces Medical Services as joining time, to the unit or station as specified in this behalf by the Director General Armed Forces Medical Services For grant of short service Commission on terms and condition setout in Army Instruction 75/78 and amended time to time.

(d) That if the PG Student after grant of short service commission applies for release from service within Five years of grant of said commission for any reason whatsoever and provided his/her release is sanctioned by the Govt. as per the rules in force. He /Shall be relieved only after he/she has refunded bond money at the rate of Rs. Five Lakhs per completed year or part thereof of unfulfilled liability to the bond money as contained in the bond agreement executed at the time of admission.

(e) That if the PG student leaves the PG institution without completing the course due to any reason after the last date of admission to the PG Course as specified by MCI/ Affiliated University, he/she will be required to pay a sum of Rs. Five Lakhs per year or part there-of of the education at the institution bases on extant rules.

(f) That the PG Student made Non Services Liability (NSL) on medical grounds will be required to pay bond money at 50% of Amount

laid down before he/she is allowed to continue his/her studies. However, in case of students becoming medically unfit for commission due to any disease or disability contracted in the circumstances over which he/she has no control (on which the decision of DGAFMS Shall be final) and for which he/she has not refused treatment, he/she will not be required to pay any Bond money but will have to pay the cost of training as applicable for further period of study from the date declared NSL.

3. Now the Condition of the Obligation in such that if the PG Student after grant of short services commission services for a period of Five years or caused to be paid to the Government the amount due to his/her in contravention of the bond agreement then this bond shall be void, otherwise the same shall be and remain in full force.”

8. The learned counsel for the petitioner submits that on completion of the course, the respondents cannot retain the original documents of the petitioner on any ground. She submits that this issue is no longer *res integra* as a learned Single Judge of this Court in her judgment dated 16.03.2018 passed in W.P.(C) 7230 of 2017, titled ***Dr. Devenderpal Singh Tomar & Anr. vs. Union of India & Ors.***, has held that even if there is a claim to be made by the respondents under the Surety Bond, they cannot retain the documents of the candidate and are free otherwise to initiate steps to recover the amount from the candidate in accordance with law. The action of the respondent nos. 1 and 2 to retain the documents in the absence of any condition in the Bond authorising such retention could be totally arbitrary and illegal.

9. On the other hand, the learned counsel for the respondents submits that the petitioner is guilty of playing fraud on the respondents at the time of seeking admission inasmuch as he had concealed his medical condition and was undergoing treatment of MDR Disseminated Koch at the Sir Ganga Ram Hospital, New Delhi. She submits that even during the course, the petitioner did not disclose his pre-existing disease in the Annual Medical Examination in the year 2015. It was only in the Annual Medical Examination for the year 2016 that the petitioner disclosed his illness.

10. She further submits that taking into account this concealment, the respondent no. 2 issued a letter dated 17.05.2018 calling upon the petitioner to pay an amount of Rs. 25,93,890/- as the cost of training from the date of his joining the MD (Anesthesia) course till the date he was finally declared medically unfit. As the petitioner has not paid the said amount, the respondents have retained the original documents with them.

11. She places reliance on the interim order dated 15.09.2017 passed by the High Court of Bombay in Writ Petition Stamp No. 22904 of 2017 titled ***Dr. Mohit Jain and Ors. v. Armed Forces Medical College and Ors.***, denying any interim relief of release of original documents to a candidate who refused to join the services in terms of the conditions stipulated. She submits that by the judgment dated 02.04.2019 passed in the said petition (re-numbered as Writ Petition No. 4123 of 2019), the High Court of Bombay dismissed the said petition.

12. She further submits that the Supreme Court, by its judgment dated 19.08.2019, passed in a batch of petitions including Writ Petition (Civil) No. 376 of 2018, titled *Association of Medical Super Specialty Aspirants and Residents & Ors. v. Union of India & Ors.*, dismissed the Special Leave Petition against the judgment of the High Court of Bombay and while otherwise upholding the provisions by obtaining the Surety Bond from the candidates and its enforceability, directed the Armed Forces Medical College to consider imposing a condition of compulsory service for a period of two years, the default of which would result in the Doctors recompensing the Government by paying Rs. 20 Lakhs.

13. We have considered the submissions made by the learned counsels for the parties.

14. As noted herein above, the petitioner has not pressed before us his prayer against the Surety Bond and the letter dated 17.05.2018 issued by the respondent no. 2 demanding a sum of Rs. 25,93,890/- from him as the cost of training. These issues, therefore, need not detain us any further. We are also informed that the respondents have already initiated a legal action seeking recovery of the above amount from the petitioner. The Competent Court will therefore, decide these proceedings on their own merit.

15. The only issue, therefore, remaining before us is whether the respondents can lawfully retain the original documents of the petitioner till the petitioner pays the amount claimed by them. We have already reproduced herein above the terms of the offer letter as also the Surety

Bond executed by the petitioner. There is no term in either of these documents authorising the respondents to retain the original documents of the petitioner as a security for payment of the amount demanded by them. In fact, to the contrary, the offer letter clearly stipulates that the custody of the original documents will remain with the respondents only till the completion of the course.

16. The learned Single Judge of this Court in ***Dr. Devenderpal Singh Tomar*** (supra), considering similar circumstances and terms, has held that the retention of the documents by the respondents would be illegal and their only remedy would be to enforce the surety bond and recover the amount claimed by them in accordance with the law. We are in full agreement with the judgment of the learned Single Judge.

17. The Order dated 15.09.2017 passed by the High Court of Bombay in ***Dr. Mohit Jain*** (supra) was merely an interim order and does not bind us.

18. As far as the judgment dated 02.04.2019 of the High Court of Bombay is concerned, the same dealt with the prayer of the petitioner therein seeking a declaration that the surety bond got executed from him was contrary to Rule 12 of the Information Brochure. As noted herein above, the petitioner before us has given up his challenge to the surety bond executed by him. The said judgment did not consider the validity of the retention of documents by the respondents till the Surety Bond is honoured/discharged and payment is made thereunder.

19. Similarly, the judgment of the Supreme Court in *Association of Medical Super Specialty Aspirants and Residents & Ors.* (supra) dealt with the legality of the demand of the State Governments and the Armed Forces Medical College from the students to execute the surety bond and to insist upon the candidates joining the service with the State Government/Armed Forces Medical Services on completion of their course. The said judgment again did not consider the entitlement of the respondents to retain the original documents of such candidates pending recovery of their demand on the failure of such candidates to join the service.

20. In view of the above, the present Writ Petition is partially allowed directing the respondents to return the original documents to the petitioner within a period of two weeks from today. This direction shall, however, not prejudice the respondents from seeking recovery of the amount demanded by them from the petitioner in accordance with the law. All defence of the petitioner would also remain open in such proceedings.

21. With the above directions, the present petition is disposed of. There shall be no order as to costs.

22. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

AUGUST 26, 2021/rv/AB