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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20784 of 2015

and

M.P.No.1 of 2015

1.Dr.R.Rajeswari

2.Dr.Ahamed Muneef

3.Dr.G.Arun Kumar

4.Dr.Durga R

5.Dr.M.Kokilavani

6.Dr.A.T.Indumathi

7.Dr.N.Poornima

8.Dr.S.Lakshmanan

...Petitioners

Vs.

1.The Dean,

Employees State Insurance Corporation Medical College &
Post Graduate Institute of Medical Science & Research,
Ashok Pillar Road, KK Nagar,
Chennai - 600 078.

2.The Tamil Nadu Dr. MGR Medical University,

rep. by the Registrar

Guindy, Chennai

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to return the following original certificates of petitioners viz, Higher Secondary / SSLC Certificate MBBS Degree Certificate, Mark Sheets, Medical Registration Certificate, CRRI Completion Certificate, MCI Recognition Certificate, Community Certificate and the following Post Graduate Degree Certificates viz Post Graduate Course Completion Certificate, Attempt Certificate, Conduct



Certificate, Transfer Certificate, Provisional Degree
Certificate, Mark Statements and any other certificates
forthwith.

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For Petitioners : Mr.L.Chandra kumar
1, 5, 6 & 8 For Mrs.P.T.Rama Devi

For Petitioners : Mr.A.Mohamed Ismail
2 to 4

For Petitioner 7 : Mr.M.L.Ganesh

For Respondent 1 : Mr.K.Prabakar

For Respondent 2 : Mr.D.Ravi Chander

O R D E R

The lis on hand has been instituted to direct the 1st respondent to return the following original certificates of petitioners viz, Higher Secondary / SSLC Certificate MBBS Degree Certificate, Mark Sheets, Medical Registration Certificate, CRRI Completion Certificate, MCI Recognition Certificate, Community Certificate and the following Post Graduate Degree Certificates viz Post Graduate Course Completion Certificate, Attempt Certificate, Conduct Certificate, Transfer Certificate, Provisional Degree Certificate Mark Statements and any other certificates forthwith.

2. The writ petition was filed in the year 2015. Considering the grievances of the writ petitioners and considering the fact that they are qualified medical practitioners, the High Court has passed an interim order for return of their certificates. Pursuant to the interim order, the certificates were returned by the respondents. When the writ petition is taken up for final hearing, initially the petitioners have not responded and when this Court asked them to substantiate their claim, the petitioners appeared and made their respective submissions.

3. The High Court has passed an interim order for return of certificates to the petitioners subject to the final orders and thereafter, abandoning the writ petition cannot be permitted by this Court. The rights of the parties are to be decided as the respondents have set out a claim that they are entitled to recover compensation based on the bond executed by the petitioners at the time of seeking admission to Post Graduate Medical Courses.



4. All the petitioners have completed their Post Graduate Medical Course from the Employees State Insurance Corporation Medical College and Post Graduate Institute of Medical Science and Research, Chennai. They have completed their course and certificates were also issued to them. One of the condition imposed is that, after completing the Post Graduate course in the 1st respondent Medical Institution, the petitioners have to serve five years with the ESI Corporation. In the event of failure, the petitioners are liable to pay a total amount of Rs.7,50,000/- with interest at the rate of 15% towards failure to fulfill the obligations. The petitioners were aware of the bond executed by them, completed their respective Post Graduate Medical Courses and pursuant to the interim order passed by this Court they have collected the Degree Certificates.

5. The question arises, whether the petitioners are liable to pay the compensation as per the bond executed by the petitioners as the respondents have set out the claim that the petitioners have not served five years in the ESI Corporation as per the bond executed by them at the time of admission to Post Graduate Medical Course in ESI Medical Institution.

6. The respective learned counsels appearing on behalf of the writ petitioners contended that some of the petitioners are working in Government Hospitals and some of the petitioners have already served in the Government Hospitals and one petitioner is now pursuing further course in Meghalaya and other petitioners are private practitioners. Therefore, they need not to pay any compensation to the ESI Corporation. Certain personal grievances are also raised by the petitioners including domestic problems.

7. This Court is of the considered opinion that any misplaced sympathy by the Court of law should not lead to injustice to the other party. Under those circumstances, balancing approach is required and in these kind of issues, the interest of the public is of paramount importance, which must be prime consideration of the Constitutional Courts.

8. Personal grievances and domestic problems are common for every citizen of this great nation. If the cases are decided merely based on personal grievances and domestic problems, then every persons will make an attempt to escape from the clutches of law. Under those situations, the Constitutional Courts are bound to keep the larger public interest, which will prevail over the personal grievances. A larger public interest is the Constitutional mandate and the relevant documents executed between the parties are significant for the purpose of deciding the issues in such nature of disputes. Thus, the personal grievances of highly qualified medical practitioners like



petitioners cannot be a ground to grant exoneration from their liabilities, which is otherwise admitted and agreed by them.

9. It is not in dispute that except the petitioners 1, 5 and 6, the other petitioners were admitted as private candidates. As far as the petitioners 1, 5 and 6 (Dr.R.Rajeswari, Dr.M.Kokilavani, Dr.A.T.Indumathi) are concerned, the ESI Corporation is not insisting for the execution of bond condition as they are in-service candidates. Therefore, the bond condition need not be executed in respect of the petitioners 1, 5 and 6 (Dr.R.Rajeswari, Dr.M.Kokilavani, Dr.A.T.Indumathi).

10. Let us now consider the bond executed by the petitioners, which all are filed before this Court. The bond executed by the petitioners at the time of admission, more specifically, the relevant terms and conditions are extracted here under:

"NOW the condition of the above written obligation is that in the event the bounden discontinues the study or after completion of the Post Graduate Course of study to which she/he was selected, fails to serve the Corporation for period of FIVE years, the Bounden and sureties shall forthwith pay to the Corporation on demand the total amount of Rs.7,50,000/- (Rupees Seven Lakh fifty thousand only) with interest @ 15% towards failure fulfill the obligation. The bond is legally binding on the bounden and the sureties and upon the payment of such sum the above written obligation shall be void and of no effect otherwise this shall remain in full force and effect:"

11. The above agreed condition unambiguously stipulates that the petitioners should serve with the ESI Corporation for a period of five years. In the event of failure, the Corporation is entitled to demand a total amount of Rs.7,50,000/- (Rupees Seven Lakh fifty thousand only) with interest at the rate of 15% towards failure to fulfill the obligation. Therefore, it is an admitted fact that the petitioners had executed bond for serving a term of five years, failing which they have agreed to settle the total amount of Rs.7,50,000/- (Rupees Seven Lakh fifty thousand only) with interest at the rate of 15% towards failure to fulfill the obligation. Thus, the petitioners are bound to serve for a period of five years or settle the compensation amount agreed.

12. In the present case, the petitioners 1, 5 and 6 (Dr.R.Rajeswari, Dr.M.Kokilavani, Dr.A.T.Indumathi) are exonerated from payment as they were in-service candidates at the time of getting admission to the Post Graduate Medical Course. As far as the other petitioners i.e., 2, 3, 4, 7 and 8



(Dr.Ahamed Muneef, Dr.G.Arun Kumar, Dr.Durga R, Dr.N.Poornima and Dr.S.Lakshmanan) are concerned they are liable to pay the compensation. However, the 7th writ petitioner, Dr.N.Poornima made a submission before this Court that she is now willing to serve with the ESI Corporation. Thus, this Court directed the learned counsel appearing on behalf of the ESI Corporation to ascertain the position and to get instructions.

13. On instructions, the learned counsel for the ESI Corporation made a submission that the request of the 7th petitioner made before this Court and made before the competent authorities are now under consideration before the committee and there is a likelihood of arising vacancy in Bangalore. In the said vacancy, the case of the 7th petitioner may be considered.

14. This Court is of the considered opinion that the 7th petitioner is also a Specialist Doctor and her service may be availed by the ESI Corporation. Now that the 7th petitioner has given her consent to work with the ESI Corporation. Therefore, the ESI Corporation is directed to consider her case positively for accommodating the 7th petitioner, Dr.N.Poornima in any one of the ESI Hospital at Bangalore enabling her to do better services in the interest of the patients attending the ESI Hospitals.

15. As far as the 8th petitioner is concerned, it is submitted that he is working as an Assistant professor in Government Medical College, Karur. However, the said fact was disputed by the learned counsel for the ESI Corporation by stating that he is not working as an Assistant professor but he is working as a Junior Resident in Tamil Nadu Medical service, which is a temporary service. Therefore, such services cannot be considered for grant of exoneration from complying with the bond condition. This apart, the 8th petitioner (Dr.S.Lakshmanan) was not an in-service candidate and he was admitted to Post Graduate Medical Course only as a private candidate. Therefore, he is liable to comply with the conditions stipulated in the bond.

16. The learned counsel for the respondent / ESI Corporation contended that on completion of Post Graduate Medical Course, the ESI Corporation immediately issued an appointment order to all the petitioners enabling them to serve in the ESI Corporation. In spite of the appointment orders, the petitioners have not chosen to serve with the ESI Corporation and intentionally violated the bond conditions and filed the writ petition, got an interim order and secured their degree certificates.



17. The learned counsel for the petitioners in reply submitted that the course was not recognized at the time of completion of course by the writ petitioners.

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18. A writ appeal was decided by the Hon'ble Division Bench of this Court on 11.08.2017 in W.A.Nos.263 of 2016 and etc., The Hon'ble Division Bench, wherein, myself (Hon'ble Mr.Justice S.M.SUBRAMANIAN) is also a party made an observation that in such circumstances, where recognition was not granted, the students are entitled to get compensation. Certain serious observations are made against the medical institution and relying on the said observations, the learned counsel for the petitioners reiterated that in the present case also, the Post Graduate Medical Course was not recognized and it took time to get recognition. Therefore, the bond condition has to be relaxed.

19. This Court is of the considered opinion that, no doubt, the ESI Corporation took some time for getting recognition of the Post Graduate Medical Course. The petitioners could not able to get the certificates immediately, but, all these petitioners were Doctors, who were practicing even during the relevant point of time and soon after completion of the Post Graduate course, the ESI Corporation issued an appointment order recognizing their degree. In such circumstances, the petitioners ought to have served with the ESI Corporation as per the bond conditions.

20. The ESI Medical Institution is an research institution imparting Post Graduate Medical Course. No doubt, there were some administrative issues in getting recognition which was solved after sometime. Taking undue advantage of such administrative issues, the petitioners cannot seek exoneration from complying with the bond condition, executed at the time of getting admission to the Post Graduate Medical Course. Thus, the petitioners had an opportunity to serve with the ESI Corporation along with the Post Graduate course they studied in the ESI Medical College. Non-recognition of the course during the relevant point of time had not affected their medical practice or joining as a Specialist Doctors in the ESI Corporation Hospital. Therefore, the said delay in getting recognition by the ESI Corporation did not cause any prejudice to the interest of the petitioners. Therefore, now they cannot raise the said ground for the purpose of seeking exoneration from complying with the bond conditions.

21. The ESI corporation is functioning from and out of the contributions collected from the laborers / employees, who all are low paid. The ESI Corporation is providing medical services to the poor laborers at free of cost. Therefore, the Post



Graduate Courses are offered on condition that the Doctors should at least serve for five years for the welfare of the ESI Corporation and for the benefit of the poor laborers, who all are getting treatment in the ESI Hospitals.

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22. The ESI Corporation has developed the research institution with a fond hope that services of these qualified Doctors can be availed for the betterment of the institution and for the betterment of the human life, more specifically, the life of the poor laborers / employees, who have contributed their hard earned money for the development of the ESI Corporation. Thus, laudable object and the bond executed must be honored by these petitioners and it is not as if they can complete the course at the cost of the ESI Corporation, develop a private practice and join elsewhere for better remuneration or benefits. The ESI Corporation imposed a condition to serve for a period of five years alone. Thus, the petitioners would have either served for five years or settle the agreed compensation.

23. It is submitted by the ESI Corporation that, during the course of study the ESI Corporation paid stipend to all the petitioners and each petitioner received a stipend of Rs.60,000/- per month during the entire course period. For all these reasons, the writ petitioners are duty bound to serve in the ESI Corporation Hospital or in lieu settle the compensation amount as agreed in the bond. The other reasons stated by the petitioners are flimsy and not acceptable and in the event of any misplaced sympathy in this aspect, no doubt, the larger interest would be prejudiced. Thus, this Court is not inclined to consider the claim of the writ petitioners.

24. Accordingly, the petitioners 1, 5 and 6, namely, Dr.R.Rajeswari, Dr.M.Kokilavani, Dr.A.T.Indumathi are exonerated from complying with the bond conditions as they were admitted to Post Graduate course as in-service candidates. In respect of other petitioners, namely, Dr.Ahmed Muneef, Dr.G.Arun Kumar, Dr.R.Durga, Dr.S.Lakshmanan are directed to settle the compensation as demanded by the ESI Corporation as per the bond condition, within a period of six months in six equal installments commencing from 1st February, 2022, failing which the ESI Corporation is at liberty to file a complaint before the Medical Council of India for initiation of all appropriate actions against the above Doctors for all further actions to cancel their Medical Registration Certificates.

25. As far as the 7th petitioner, Dr.N.Poornima is concerned the ESI Corporation is directed to consider her case and issue posting order at Bangalore, as expeditiously as possible,



enabling her to serve with the ESI Corporation as per the bond conditions. In the event of not joining, the 7th petitioner is also liable to pay the compensation amount as per the bond conditions. Thus, three months time is granted to the ESI Corporation to issue appropriate positing orders enabling the 7th petitioner to accept the same.

26. With these directions, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Dean,
Employees State Insurance Corporation Medical College &
Post Graduate Institute of Medical Science & Research,
Ashok Pillar Road, KK Nagar,
Chennai - 600 078.

2.The Registrar,
Tamil Nadu Dr. MGR Medical University,
Guindy, Chennai.

+lcc to M/s.P.T.Ramadevi, Advocate Sr.1883
+lcc to Mr.A.Mohamed Ismail, Advocate Sr.1760
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