



W.A.No.2666 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 14.12.2022

Coram:

THE HONOURABLE MR.T.RAJA, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Appeal No.2666 of 2022
and
C.M.P.Nos.21479 and 21481 of 2022

Dr.S.Sathya. MS (OG)

.. Appellant

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government
Health and Family Welfare Department,
Fort St.George,
Secretariat,
Chennai-600 009.

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

3. The Dean,
Villupuram Medical College,
Villupuram.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the interim order dated 01.12.2022, passed by the learned Single Judge, in Writ

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Petition No.31465 of 2022, on the file of this Court.

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Writ Petition No.31465 of 2022 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to return the original educational qualification certificates of the petitioner to enable her to join as Senior Resident in ESIC Medical College and Hospital, K.K.Nagar, Chennai-600 078, based on the appointment order issued by the ESI Corporation, Chennai dated 17.11.2022 in consideration of the representation submitted by the petitioner dated 09.11.2022 and 18.11.2022 forthwith.

For appellant : Mr.G.Sankaran

For respondents: Mrs.R.Anitha, Spl.G.P.

JUDGMENT

(Judgment of the Court was delivered by
Honourable Acting Chief Justice and D.Bharatha Chakravarthy, J)

This Writ Appeal is directed against the interim order dated 01.12.2022 passed by the learned Single Judge in W.P.No.31465 of 2022

2. While posting the Writ Petition after four weeks for further hearing,

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the learned Single Judge has passed the following interim order:

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"11. However, since the petitioner ultimately wants all the certificates to be returned to her for the purpose of joining in the new job, this Court is inclined to pass the following interim order:

(i) That the petitioner shall deposit a sum of Rs.10 lakhs i.e., the one fourth of the bond amount of Rs.40 lakhs at the third respondent Institution, as against which, the third respondent shall return back all the original certificates available with the third respondent belonging to the petitioner forthwith, enabling the petitioner to join in the new job.

(ii) The deposit of Rs.10 lakhs as indicated above is subjected to the outcome of the decision to be made in the main writ petition."

3. The appellant/writ petitioner, aggrieved by the condition contained in Clause (ii) of paragraph 11 of the impugned order passed by the learned Single Judge, directing the petitioner to deposit a sum of Rs.10 lakhs, has preferred the present Writ Appeal.

4. Brief facts leading to the filing of the present Writ Appeal are as



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follows:

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(a) The appellant/writ petitioner under-went Post-Graduate Medical Education in the College under the respondents 1 to 3 with a bond condition that she will serve the Government for a period of 24 months.

(b) The appellant/writ petitioner completed her course in May 2018. Thereafter, on 07.08.2018, an appointment order was issued to her. However, at that time, she did not join duty and she had prayed that since she had become pregnant, she was unable to join duty.

(c) Thereafter, once again a revised appointment order was issued on 12.04.2019, pursuant to which, she joined the bond service at Villupuram Medical College with effect from 17.04.2019.

(d) Again, on 27.11.2019, she proceeded on maternity leave, but on the expiry of 24 month-period from the date of completion of her course, she sought her Certificates more-fully stating that she has also got regular appointment in the Employees' State Insurance Corporation Hospital (ESIC Hospital), Chennai-600 078.

(e) Since the respondents did not hand-over the original certificates so as to enable her to join the ESIC Hospital, the Writ Petition was filed before



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the learned Single Judge.

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5. It is the contention of the learned counsel for the appellant/writ petitioner that in a Division Bench decision of this Court reported in 2020 SCC Online Madras 2742 = 2020 (7) Mad.L.J. 513 (State of Tamil Nadu and another Vs. P.S.Sairam and others), it was held that for the delay in issuing the appointment order, the candidates cannot be prejudiced and the bond period will expire on 24th month of the completion of Post-Graduate Degree course. Therefore, the period for which the appointment order was granted with delay, should also be taken into account, and it cannot be ignored for the purpose of 24 - months' service.

6. That apart, it is the contention of the learned counsel for the appellant/writ petitioner that by virtue of G.O.(Ms).No.91, Personnel and Administrative Reforms (FR.II) Department, dated 28.07.2020, the maternity leave benefits which are granted to permanent Government servants, were also extended to non-permanent married women Government servants who are appointed on regular capacity. The appellant/writ petitioner

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was appointed in a regular capacity and therefore, the full maternity leave which is granted to a regular Government servant should also be counted with reference to the bond service also. It is the contention of the learned counsel for the appellant/writ petitioner that even the salary for the maternity leave period, has also been paid.

7. The said contentions of the appellant/writ petitioner, were contested by the respondents, by stating that the entire period of delay in issuing the appointment order, cannot be attributed to the respondents. As a matter of fact, there was only delay of three months and in the month of August itself, the first offer of appointment was made. Similarly, even though the appellant/writ petitioner will be entitled for maternity leave and the monetary benefits thereto, it need not be taken into account for the purpose of bond service.

8. The learned Single Judge, after noting the stand taken by both sides, had to post the Writ Petition for further hearing. In the meanwhile, since the last date for the appellant/writ petitioner to join the ESIC Hospital



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expires by 15.12.2022, the need for the interim order arose.

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9. Therefore, considering the submissions made by both sides so as to balance the interest of both sides, and considering the fact that ultimately, the appellant/writ petitioner, in the event of losing the case, would be liable to pay for the bond amount of Rs.40 lakhs, this Court impose 25% of the bond amount, i.e. Rs.10 lakhs as a condition to be deposited upfront by the appellant while directing the original certificates to be returned to her, so as to join new job.

10. Heard the learned counsel for the appellant/writ petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record. Both the learned counsels reiterated their respective stands taken in the Writ Petition.

11. Learned counsel for the appellant/writ petitioner prayed that the condition imposed by the learned Single Judge to deposit a sum of Rs.10 lakhs is onerous and the appellant/writ petitioner has more than prima-facie



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case in the impugned Writ Petition.

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12. The learned Special Government Pleader on the other hand contended that only a sum of Rs.10 lakhs have been ordered to be deposited, so as to balance the interest of both sides, as it will be difficult to recover the entire sum if ultimately the respondents' case is accepted by the Court.

13. We are only concerned with Clause (ii) of paragraph 11 of the impugned interim order passed by the learned Single Judge.

14. After considering the arguments made by both sides, we are of the opinion that an important factor which has to be taken into account in the present case is that the appellant/writ petitioner is not leaving the third respondent-College Hospital for any private employment. But, on the other hand, she is again joining the ESIC Hospital, Chennai, which is again a Central Government Hospital, catering to the poor workmen and general public.



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15. Keeping the above factors in mind, since grave prejudice is expressed by the appellant/writ petitioner, we are inclined to modify the said condition that instead of directing the appellant/writ petitioner to deposit a sum of Rs.10 lakhs, the same shall be modified to the effect that the appellant/writ petitioner will be entitled to either furnish a Bank Guarantee for a sum of Rs.10 lakhs or produce immovable property security for the said sum of Rs.10 lakhs, to the satisfaction of the second respondent/Director of Medical Education, Chennai.

16. Since the time for joining is to expire tomorrow (15.12.2022), and also taking note of the fact that the appellant/writ petitioner is going to serve only in the Employees' State Insurance Corporation Hospital, which is also running service to the public at large, we make it clear that the appellant/writ petitioner is entitled to furnish either Bank Guarantee for Rs.10 lakhs (Rupees ten lakhs only) or to furnish immovable property security for Rs.10 lakhs (Rupees ten lakhs only), within a period of two weeks from the date of receipt of a copy of this order.



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17. However, the respondents need not await furnishing of Bank Guarantee or immovable property security as directed above, for the purpose of complying with the direction of returning the original Certificates given in Clause (i) of paragraph 11 of the impugned order passed by the learned Single Judge and the said original certificates shall be handed over in the meanwhile.

18. The present Writ Appeal stands disposed of with the above observations and directions. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

(T.R.,ACJ) (D.B.C., J)
14.12.2022

Index: Yes/no

Speaking Order: Yes/no
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1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government
Health and Family Welfare Department,
Fort St.George,
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Chennai-600 009.
2. The Director of Medical Education,
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3. The Dean,
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HONOURABLE ACTING CHIEF JUSTICE

and

D.BHARATHA CHAKRAVARTHY, J

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