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W.P.No.29180 to 29185 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.11.2021

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.29180, 29181, 29182, 29183, 29184 & 29185 of 2017

and

WMP 31457,31452, 31453,31454, 31455 & 31457 of 2017

Dr.A.Elaiyaraja	... Petitioner in W.P.No.29180 / 2017
Dr.G.Sakthiram	... Petitioner in W.P.No.29181 / 2017
Dr.R.Andrea Josephine	... Petitioner in W.P.No.29182 / 2017
Dr.Ramakrishnan A.P.	... Petitioner in W.P.No.29183 / 2017
Dr.Saranya.P.	... Petitioner in W.P.No.29184 / 2017
Dr.K.Krithika	... Petitioner in W.P.No.29185 / 2017

Vs.

1. The Medical Council of India,
Rep. by its President, Pocket 14,
Sector 8, Dwarka, Phase-I,
New Delhi.
2. The Tamilnadu Medical Council,
Rep. by its President,
914, Poonamallee High Road,
Arumbakkam, Chennai 600 106.



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3. The Medical Commissioner,
(Medical Education),
Employees State Insurance Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi 100 002.
4. The Dean,
ESIC Medical College and Post Graduate,
Institute of Medical Science and Research,
K.K.Nagar, Chennai 600 078.
5. The Assistant Director (Medical Education),
Employees State Insurance Corporation,
Panchdeep Bhavan, CIG Road,
New Delhi 100 002.
6. The Union of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi.

R6 suo motu impleaded as per order
dated 8.12.2017 in W.P.Nos.29675 to
29677/2017, 29180 to 19193/2017.

.. Respondents in all W.Ps.

PRAYER in W.P.29185/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2016-(Bond)/ME Cell - Office Order No. 64/2016, dated 19.12.2016 passed by the fifth respondent and quash the same.

PRAYER in W.P.29181/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2017-



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(Bond)/ME Cell - Office Order No. 27/2017, dated 12.07.2017 passed by the fifth respondent and quash the same.

PRAYER in W.P.29182/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2017-(Bond)/ME Cell - Office Order No. 31/2017, dated 12.07.2017 passed by the fifth respondent and quash the same.

PRAYER in W.P.29183/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2017-(Bond)/ME Cell - Office Order No. 33/2017, dated 12.07.2017 passed by the fifth respondent and quash the same.

PRAYER in W.P.29184/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2017-(Bond)/ME Cell - Office Order No. 34/2017, dated 12.07.2017 passed by the fifth respondent and quash the same.

PRAYER in W.P.29185/2017: Writ petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, calling for the records relating to the impugned order made in No.L11/12/3/2017-(Bond)/ME Cell - Office Order No. 28/2017, dated 12.07.2017 passed by the fifth respondent and quash the same.



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In all writ petitions

For Petitioner : Mr.N.Manokaran in all writ petitions

For Respondents : Mrs.Subharanjani Anandh for R1

Mr.G.Sankar for R2

Mr.K.Prabhakar for R3 to R5

Mr.V.Chandrasekar,

Standing Panel Counsel for R6

COMMON ORDER

The Writ Petitions have been filed to quash the impugned posting orders issued to the petitioners on various dates, by the fifth respondent.

2. The facts and circumstances of the case and the issues involved in all the writ petitions are one and the same and hence, all the writ petitions are taken together and this Court passes the common order.

3. According to the petitioners, after completing MBBS Course, they got admission in M.D. (General Medicine) under All India Quoto and they completed the same during the year 2016 and 2017. The contention of the petitioners is that, at the time of joining the P.G.



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Course, the respondents 3 and 4 insisted them to execute a bond, for the purpose of serving in ESIC Hospital for a period of five years, after completion of PG Course. Further, it was informed them that, if the petitioners refused to execute the bond, the admission for P.G.Course, would be cancelled. Hence, on compulsion, the petitioners executed the bond and they completed the P.G. Course. Now the petitioners are prevented to continue their super specialty course by the 5th respondent, by issuing the impugned posting orders to serve in ESI hospitals for a period of 5 years, in fulfilment of conditions of compulsory service. Hence the writ petitions.

4. The first respondent filed counter affidavit, wherein, it is their main contention that, the petitioners executed a bond at the time of joining P.G. Course and hence, they should act as per the bond, and the bond is valid.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents and I have perused the materials on record.

6. Admittedly, this writ petitions have been filed, challenging



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the posting order issued by the fifth respondent, pursuant to the bond executed by the petitioners, at the time of joining P.G. Course. It is the contention of the petitioners that, they were compelled to execute such a bond and the bond was not executed with full consent and hence, it has no legal sanctity. According to them, the payment of stipend cannot be considered as an exgratia payment for the students undergoing PG course and the payment of stipend is only a apprentice fees. The respondents 3 to 5, instead of following recruitment process, have adopted different mode to fill up the vacancies in the subordinate post, by imposing the temporary, compulsory service on the post graduate. The main ground of the petitioners is that, the bond was not executed with full consent and hence, the petitioners cannot be expected to serve on contract basis for 5 years, on the basis of bond.

7. The issue of executing a bond, and passing of consequent orders to act as per the bond, is settled by the Apex Court in the decision in *Association of Medical Superspeciality Aspirants and Residents and others Vs. Union of India and others, reported in (2019) 8 Supreme Court Cases 607*. The relevant paragraphs reads as follows:

35. The submission of Mr.Huzefa Ahamid, learned Senior Counsel



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for the appellants is that the conditions of the bond per se amount to " forced labour" and thus are violative of Article 23(1) of the Constitution. Mr.Dwivedi expostulated the said submission by referring to Article 23(2) which confers power on the State to impose compulsory service for public purpose. Reliance was placed upon the Constituent Assembly Debates by Mr.Dwivedi explaining the scope of compulsory employment for public purpose under Article 23(2) of the Constitution of India. The appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform "forced labour", especially after the appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidised education. By no means, the service rendered by the appellants in government hospital would fall under the expression of " forced labour".

36. ..

37...

38. ..

39. The argument advanced on behalf of the appellants that compulsory bonds placed a restraint on their profession and thus, would be contrary to Section 27 of the Contract Act, 1872. The High Court of Calcutta repelled this submission by holding that the compulsory bond does not amount to any restraint on the professional activity of the appellants. The High Court observed that the appellants are offered the job of Medical Officer in the State of West Bengal and that the covenant in the compulsory bond operates only during the period of such employment. Relying upon the dictum of Lord Morris in *Esso Petroleum Co. Ltd. Vs. Harper's Garage (Stourport) Ltd.* that: (Ac p.307)

"if A made a contract under which he willingly agreed to serve B on reasonable terms for a few years and to give his whole working time to B, it



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would be surprising indeed, if it were sought to describe the contract as being in restraint of trade; in fact, such a contract would very likely be for the advancement of trade."

The High Court concluded that a contract entered into by appellants to serve the Government for a few years under reasonable terms cannot be described as one in restraint of trade. We are in agreement with the findings recorded by the High Court of Calcutta. Therefore, we are of the considered opinion that the conditions of compulsory bonds for admission to postgraduate and super speciality courses in government medical colleges are not in violation of Section 27 of the Contract Act, 1972.

40. The upshot of the above discussion is that the writ petitions and the appeals deserve to be dismissed. Consequently, all the doctors who have executed compulsory bonds shall be bound by the conditions contained therein.

8. The similar issue came up before this Court *in W.A.462, 464 and 471 of 2022 between Dr. Ahamed Muneef Vs. Dr.Rajeswari and 8 others, wherein, a Division Bench of this Court, vide order dated 07.03.2022* held that " *since the appellants accepted the terms and conditions of the bond, they have to strictly adhere to the default clause too*". As the law is settled and the bond is executable, now, the petitioners cannot challenge the conditions of the bond, on the ground that the same was obtained forcefully and there was no valid consent.

Such view of the matter, this Court is of the view that there is no merit in



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the writ petitions and the same deserve for dismissal.

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9. Accordingly, all the writ petitions are dismissed.

Consequently, connected writ miscellaneous petitions are closed. No costs.

11.11.2022

Internet: Yes/No
mst

To

1. The President, The Medical Council of India,
Pocket 14, Sector 8, Dwarka, Phase-I,
New Delhi.
2. The President, TheTamilnadu Medical Council,
914, Poonamallee High Road,
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6. The Secretary, The Union of India,
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