



WEB COPY



W.P.No.15135 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

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MR.JUSTICE N.SESHASAYEE

W.P.No.15135 of 2023
and W.M.P.Nos.14629, 14631 and 14634 of 2023

Dr.Arun Prasad. D

... Petitioner

Vs.

1.The State of Tamil Nadu
Represented by the Principal Secretary
Health & Family Welfare Department
Fort St. George, Secretariat
Chennai 600 009

2.Directorate of Medical Education
Represented by its Director
Kilpauk, Chennai 600 010

3.Directorate of Public health and Prevention Medicine
Represented by its Director
359, Anna Salai, Chennai 600 006

4.Directorate of Medical and Rural Health services
Represented by its Director
359, Anna Salai, Chennai 600 006

5.Madras Medical College
Represented by its Dean
Chennai 600 003

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India,
for issuance of a writ of Certiorarified Mandamus, to call for records of the 3rd



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respondent contained in its order bearing R.No.3418534 / E7/ A1/ 2022-68, dated 31.03.2023, and to quash the same as arbitrary, unjust and illegal and consequently direct the 5th respondent to return all the petitioner's original certificates and documents along with Post Graduate Master of Surgery M.S. Orthopedics certificates directing the respondents 1 and 2 to direct the 5th respondent to return the (1) Original UG Certificate, (2) Original P.G. Mark Sheet, (3) Original PG Degree Certificate and all other original documents submitted by the petitioner at the time of his admission.

For Petitioner : Mr.P.Gnanasekaran

For Respondents : Mr.C.Kathiravan
Spl. Government Pleader for R1 to R5

ORDER

The petitioner has completed his Post Graduation in Orthopedics in May 2021. During COVID day one, he had worked for eight months on special COVID related responsibilities and he was relieved thereafter. At the time when he joined the post graduation course, he executed a bond for serving under the Government for two years and in default of which, the petitioner is liable to pay a sum of Rs.40 lakhs.

2.The grievance of the petitioner is that while the petitioner has completed his course in May 2021, till date he has not been given any placement by the respondents and he has not been provided with an order of appointment till date and the last date for issuing the appointment order expired in May 2023.



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However, the petitioner was served with an order of appointment only on 31.03.2023 and he was posted as Assistant Surgeon under Category II of Class I of Tamil Nadu Medical Service to work at Government Hospital, Kalayarkoil, Sivaganga District. In the meantime, the 2nd respondent has withheld the entire educational certificates of the petitioner.

3.Learned counsel for the petitioner submitted after excluding the eight months period that he worked on COVID duty, he is required to work only for the remaining period. At any rate, the order of appointment has been issued at the fag end of the two year period within which the petitioner should have been served with an appointment order and hence even the six months period required will stretch beyond the period of bond. This is impermissible as per the ratio in W.A.No.799 of 2019 dated 06.10.2020 in ***the State of Tamil Nadu, through its Secretary and another v. P.S.Sairam and others.***

4.Heard Mr.C.Kathiravan, the learned Special Government Pleader. He submitted that since there are no vacancies to fit in the petitioner, an order of appointment has been given.

5.There are two parts to the issue before the Court:

<https://www.mhc.tn.gov.in/judis> a) *the right of the respondents to exercise any lien over the*



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certificates of the petitioner vis-a-vis the bond executed by the petitioner.

b. the performance of the bond itself.

6.The bond by its very nature gives a choice to a candidate either to abide by the obligations created under the bond or to make payments in lieu of actual service. However, for any one of the two to happen, the order of appointment ought to have been issued to enable the candidate to complete the entire two year period immediately on completion of the course. While this Court does not intend to embark on any possible liability which the petitioner may invite for breaching the bond for the present, but still owes the authorities do not have right to exercise any lien on the certificates and they are duty bound to part with the same.

7.This writ petition stands allowed accordingly. The respondents are free to pursue such legal remedies, if they are available to them in law to protect its interest under the bond. No costs. Consequently, the connected miscellaneous petitions are closed.

18.07.2023

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Index : Yes / No

Neutral citation : yes/no

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