



W.A.No.77 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.No.77 of 2021
and
C.M.P.No.633 of 2021**

1.The Government of Tamil Nadu,
Rep. by its Principal / Health Secretary,
Health and Family Welfare Department,
Chennai - 600 009.

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

3.The Dean,
Madras Medical College,
Chennai - 600 003.

4.The Director of Public Health and Preventive Medicine,
D.M.S.Complex,
Teynampet, Chennai - 600 006.

... Appellants

Vs.

Dr.Elamathi Bose

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order
passed by the learned Judge dated 09.08.2019 made in W.P.No.33460 of 2016.



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W.A.No.77 of 2021

For Appellants : Mr.C.Kathiravan
Special Government Pleader

For respondent : Mr.N.G.R.Prasad & Mr.V.Govardhanan
for M/s.Row & Reddy

JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

This writ appeal has been filed by the State praying to set aside the order passed by the learned Judge in W.P.No.33460 of 2016 on 09.08.2019.

2. The respondent herein filed the aforesaid writ petition seeking to issue a writ of mandamus, directing the appellants to consider the period of extraordinary leave granted to her as study leave during the period from 2011 to 2014 for undergoing the Post Graduate Course of three years Programme viz. M.D.(Anatomy) in the Private Deemed University, ie., Sree Meenakshi Medical College Hospital and Research Institute, Enathur, Kancheepuram and to count the said period for promotion, pension, seniority and increment and disburse salary for the period of study with all service and other monetary benefits.

3. It was stated in the writ petition by the respondent herein that after completion of MBBS, she participated in the selection conducted by the Tamil Nadu Public Service Commission for appointment to the post of Assistant Surgeon and got selected on merits and was posted under the fourth appellant.



W.A.No.77 of 2021

She joined the service on 06.07.2006 and completed her probation and her services were regularized from the date of her joining duty *vide* proceedings of the fourth appellant dated 17.03.2009. While so, she wanted to acquire specialized qualification by pursuing PG course in Medical Science. According to the respondent / writ petitioner, 50% of the available seats in PG Medical courses have been surrendered to All India Quota as per the orders of the Hon'ble Supreme Court and the remaining 50% seats meant for both non-service candidates as well as in-service candidates being divided equally, ie., 50% of seats remained with the State quota, while half of the seats ie., 25% of the same will be allotted to non-service candidates and the remaining 25% would be filled by in-service candidates from among the eligible candidates like that of the writ petitioner.

4. It was further stated in the writ petition that as far as the State of Tamil Nadu is concerned, private self-financing Medical colleges shared seats with the Government for allotment to the students and the selection process would be made through Selection Committee in respect of those seats. The remaining seats will be filled up by the self-financing colleges by adopting their own method of selection. There are Deemed Universities which impart higher Medical education adopting their own method of selection for available seats in the University. Normally, the Doctors, who were in service, always prefer to pursue their PG



W.A.No.77 of 2021

medical course in Government aided institutions or shared seats in self-financing colleges through common selection method in view of reasonable fee structure.

As far as the Deemed Universities and self-financing colleges are concerned, the Management quota is always filled up by adopting their own method and not by common selection method and the fee structure would be very high.

5. While so, the Government had passed an order in G.O.(Ms) No.594 Health and Family Welfare Department, dated 02.12.1997, sanctioning full pay and allowances for service candidates undergoing PG Degree/Diploma and Super speciality courses. However, the said benefit was not extended to in-service candidates who were selected through Single Window System in the seats surrendered by self-financing colleges. Thereafter, the Government had passed G.O.(Ms)No.94 Health and Family Welfare (B1) Department, dated 01.03.2016 ordering full pay and allowances to the candidates pursuing their P.G. Medical courses in self-financing colleges selected through selection committee / Single Window System on par with other service candidates undergoing PG courses in Government Medical Institutions. The said G.O. has prescribed certain conditions, such as, they will work in the Government Medical Institution till their retirement after completion of their course, etc.

6. In the writ petition, the respondent also stated that in the absence of



W.A.No.77 of 2021

availability of sufficient seats, she could not secure any seat in Government institution or in any surrendered seats in self-financing colleges. But she got admission in a private Deemed University, namely, Sree Meenakshi Medical College, Hospital and Research Institute, Enathur, Kancheepuram, to the course M.D. (Anatomy). The duration of the same was three years, ie., from 2011 to 2014. As soon as she got admission, she gave a letter dated 16.06.2011 to the fourth appellant herein, requesting for grant of special leave under extraordinary circumstances to pursue P.G. Course. In response to the same, the Government originally passed an order in G.O.(D) No.857 Health and Family Welfare (B1) Department dated 18.7.2011, permitting her to pursue the Course for the year 2011-12 and subsequently, two other G.Os. were issued on 06.05.2013 and 17.06.2014 respectively, granting permission to her for the entire course period.

7. It was further stated by the respondent that after completion of P.G course, she reported to duty and she was given a posting order on 08.05.2014 and she was posted as Tutor/Assistant Professor of Anatomy at Madras Medical College, Chennai and she is still in Government service. Stating that the respondent on her own efforts, had secured P.G. seat in a private Deemed University and she had funded her higher education by availing education loan and acquired the qualification and the specialized qualification earned by her, ie., M.D. (Anatomy) has been utilized by the Government, she submitted number of



W.A.No.77 of 2021

representations to the appellant authorities to grant the benefits of full pay and allowances for the period of study, i.e. three years as given to the other candidates, who were allowed to pursue their P.G. Courses on their selection through Single Window System in self-financing colleges, but the same did not evoke any positive response.

8. With the above background, the learned counsel appearing for the respondent / writ petitioner put forth his submission before the writ Court that except the selection mode for admission, there was absolutely no difference between the P.G. Courses pursued in the Government Medical Colleges and self-financing private medical colleges; the course contents are the same and the Government is also benefited by the specialized knowledge acquired by the respondent in discharge of her duties as P.G. Doctor. It was further argued before the writ court that the Government was fully aware of the situation and therefore, it passed orders permitting the writ petitioner to pursue her P.G.Course for a period of three years; that, having acquired P.G. Degree in Anatomy, she was ever willing to serve the Government till her retirement and in fact, even before her completion of P.G. course, she informed the Government about her completion and therefore, appointment order was issued immediately on 08.05.2014 and she joined the Government service on completion of P.G. Course. The learned counsel relying upon several instances, orders passed by this Court



W.A.No.77 of 2021

and the G.Os. passed by the Government, submitted that the Government ought to have paid full pay and allowances to the respondent herein for the period of study.

9. On the other hand, it was argued on the side of the appellants before the writ court that the writ petitioner cannot claim full pay and allowances for the period of study as she pursued the same in a private Deemed University, which was not a recognized one; the Government Orders issued on the subject matter envisaged such benefit to be conferred only for the in-service candidates who pursued their studies either in Government Colleges or in the seats surrendered by the self-financing colleges and selected through Single Window System. It was further pointed out that in 2010 the writ petitioner had been allotted P.G. course under a Government quota in a different discipline, but she discontinued the course in 2011 and joined the new PG course in a private deemed University on her own and hence, she cannot expect the Government to extend the benefit of full pay and allowances for the P.G. Course chosen by her in a private Deemed University. It was also submitted that at the time when the leave was granted to the writ petitioner, she was fully aware that no pay and allowances would be paid to her, since it was specifically mentioned in the Government Orders itself that her period of study is treated as extraordinary leave without pay and allowances. When the Government has expressed its intention very clearly that the candidates



W.A.No.77 of 2021

who secured seat in Management quota were not eligible for getting any facility in terms of various G.Os., particularly, G.O.Ms.No.94 Health and Family Welfare (B1) Department dated 01.03.2016, the respondent / writ petitioner, after completion of the course, cannot turn around and seek for conferment of benefits for the period of study.

10. Considering the arguments advanced on both sides and the materials placed on record, the learned Judge allowed the writ petition granting the benefit as prayed for by the writ petitioner, by the order impugned herein. Hence the present appeal by the State.

11. Mr.C.Kathiravan, learned Special Government Pleader appearing on behalf of the State, submitted that the order of the learned Judge is against law and probabilities of the case. Adding further, it is stated that the respondent herein had studied in the Deemed University at her own willing, without preferring Tamil Nadu Post Graduate Entrance Examination for MD/MS/Diploma Courses for 2011-2012 Session, which was conducted by the Selection Committee, Directorate of Medical Education, Chennai. That apart, the respondent / writ petitioner had discontinued her Post Graduate course in the Directorate of Public Health and Preventive Medicine, within a period of six months, which was allotted to her by the second appellant in the year 2010-11 at Madras Medical College,



W.A.No.77 of 2021

Chennai; and thereafter, she had joined M.D.(Anatomy) Course in the Deemed University, viz., Meenakshi Medical College Hospital & Research Institute, Enathur, Kancheepuram, on paying donation and not on merit. It was clearly mentioned in the Government Orders that her period of study would be treated as extraordinary leave without pay and allowances. Thus, having not secured higher marks to get a seat in Government Medical Colleges, which are charging meager tuition fees for Post Graduate Degree MD/MD Courses and Post Graduate Diploma Courses, and having been aware that she would not be eligible for salary during the study period, it is the fault only on the part of the respondent to join the Post Graduate Course in the Deemed University on the expectation that pay and allowances would be granted to her after completion of studies. The learned counsel also submitted that the respondent has not rendered any service during the study period and hence, she is not eligible for salary during the same. It is finally submitted that while sanctioning extraordinary leave for every year of study by way of Government Orders, it was clearly stated that she is not eligible for any pay and allowances and hence, it is not correct on her part to claim the benefits, after the study period is over. With these submissions, the learned Government counsel prayed to set aside the order passed by the learned Judge and allow this writ appeal.

12. Per contra, the learned counsel for the respondent reiterated the



W.A.No.77 of 2021

arguments put forth before the writ Court and submitted that the order passed by the learned Judge does not require any interference, as the same has been passed based on the principles of fair play, equity, good conscience and natural justice.

13. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

14. Concededly, the respondent / writ petitioner has pursued her M.D. (Anatomy) Course in a private Deemed University, not selected through the Selection Committee. The authorities have permitted the respondent to pursue the said three year course, by issuing orders clearly mentioning that the period would be treated as extraordinary leave without pay and allowances. However, after completion of course and joining the service, the respondent made representations seeking pay and allowances on par with the candidates, who had been conferred with the benefit of G.O.Ms.No.94 dated 01.03.2016. Finding no response on the same, she approached the writ court by filing WP.No.33460 of 2016.

15. The learned Judge, after having found that the candidate acquired



W.A.No.77 of 2021

specialized knowledge in Anatomy by successfully completing her P.G course and joined the Government service and that, except the method of selection, the knowledge acquired by such of those candidates either from a private Deemed University or a Government institution, does not vary, and such knowledge acquired would be utilized by the Government for the benefit of larger public interest and also referring to the willingness of the respondent to serve the Government till her retirement, and further referring to claims of two others, who have pursued their PG course in Savitha Dental College of Nursing and Omayal Achi College of Nursing, Chennai, which are private institutions and also pointing out that very few medical seats are available in PG courses in Government institutions and as such, it is very difficult for the candidates to secure seats in Government quota or in surrendered seats in self-financing colleges, held that the Government ought to have extended the benefit of G.O.Ms.No.94, dated 01.03.2016 to the respondent herein. Holding so, the learned Judge allowed the writ petition filed by the respondent / writ petitioner, by the order impugned herein.

16. It is the specific contention of the learned counsel for the appellants that the respondent had pursued her PG course i.e., M.D (Anatomy) in a Private Deemed University on her own, without undergoing the Tamil Nadu Post Graduate Entrance Examination for MD/MS/Diploma Courses for 2011-12 session,



W.A.No.77 of 2021

which was conducted by the Selection Committee and hence, she is not entitled for the benefit conferred under G.O.Ms.No.94 dated 01.03.2016. It is also stated that after having accepted that permission was granted to pursue her three years course, without pay and allowances, the respondent cannot now come and seek pay and allowances for the study period. Thus, according to the appellants, the learned Judge erroneously allowed the claim of the respondent and directed the appellants to pay full salary and consequential benefits to her.

17. This court finds considerable force in the submissions so made on the side of the appellants. It is not in dispute that as per G.O.Ms.No.94 dated 01.03.2016, the medical officers in Tamil Nadu Medical Services, who are undergoing PG degree / Diploma / M.Ch courses in self financing institutions on selection through the Selection Committee / Single Window System, will be paid salary and other allowances on par with other service candidates undergoing PG degree/diploma / M.Ch courses in Government medical Institutions, subject to certain conditions, including the execution of bond / furnishing an undertaking that they will work in the Tamil Nadu Government Medical Institution till their superannuation after completion of their course; and the said G.O. has not been put to challenge till date. As already pointed out, the respondent has pursued her M.D. (Anatomy) Course in a private Deemed University, not selected through the Selection Committee. Further, the Government Orders sanctioning permission to



W.A.No.77 of 2021

the respondent to pursue her PG course would clearly indicate that the period of study would be treated as extraordinary leave without pay and allowances. However, the respondent, after completion of course and joining the service, claimed pay and allowances for the period of study, on par with those, who had been conferred with the benefit of the said G.O. This court is of the view that once sanction has been granted by the Government mentioning such terms, it is not correct on the part of the respondent herein, after completion of the course, to claim that she is entitled to such benefit, on the premise that she is willing to serve the Government till her retirement.

18. In such view of the matter, it cannot be stated that except the method of selection, the knowledge acquired by such of those candidates either from a private Deemed University or a Government institution, does not vary, and since the said knowledge would be utilized by the Government for the general public, the candidate has to be granted pay and allowances for the period of study. That apart, the instances referred to in the order of the learned Judge, relating to two persons, who have pursued their PG course in Savitha Dental College of Nursing and Omayal Achi College of Nursing, Chennai which are private institutions, cannot be taken as precedent for considering the claim of the respondent, as they are staff nurses and not equivalent to the rank of the respondent herein and that, those persons have been given the benefit, in view of court orders and the



W.A.No.77 of 2021

applicability of the said orders, is depending on the facts and circumstances of each case.

19. It may be true that in view of limited medical seats available in PG courses in Government institutions, it is difficult for the candidates to secure seats in Government quota or in surrendered seats in self-financing colleges, but that does not nullify the effect of an Order clearly stating the intention of the Government that the candidates who secured seat in Management quota were not eligible for getting any such facility and permitting such facility would be outside the purview of the Government Order, ie., G.O.Ms.No.94, dated 01.03.2016. Even though the observations of the learned Judge granting such benefit to the respondent herein, seems to be on good motive, as per the objectives and policy of the Government, it would not be appropriate to grant such benefit to the respondent herein, in view of the fact that she had originally been allotted P.G. course in 2010 under a Government quota in a different discipline, but she discontinued the course in 2011 on her own request; and that, the selection of Private University by the respondent herein for pursuing P.G. Degree in Anatomy is on her own choice and not on merit. Therefore, this court is of the firm opinion that the respondent is not entitled for pay and allowances for the period of study, by extending the benefit of G.O.Ms.No.94 dated 01.03.2016.



W.A.No.77 of 2021

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20. In fine, the writ appeal stands allowed by setting aside the order of the learned Judge. No costs. Consequently connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
05.06.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes / No

To

- 1.The Principal / Health Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Chennai - 600 009.
- 2.The Director of Medical Education,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.
- 3.The Dean,
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- 4.The Director of Public Health and Preventive Medicine,
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W.A.No.77 of 2021

R. MAHADEVAN, J.
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W.A.No.77 of 2021
and C.M.P.No.633 of 2021

05.06.2023