



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 20211 & 30425 of 2022

And

W.M.P.No. 29858 of 2022

M.Govindarasu

... Petitioner in both Petitions

..Vs..

1. The Secretary
Ministry of Health and Family Welfare
Government of India
Nirman Bhavan, New Delhi 110 011.
2. The Secretary
Ministry of Health and Family Welfare
Tamil Nadu, Fort St. George
Chennai – 9.
3. The Secretary
Medical Council of India
Pocket-14, Sector 8, Dwarka
New Delhi.
4. The Director of Medical Education
Government of Tamil Nadu
EVR Road, Kilpauk, Chennai -10.



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5. The Dean
The Government Theni Medical College,
Theni District.

... Respondents

PRAYER IN W.P.No. 20211 of 2022: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the respondents herein to disburse the monthly stipend forthwith to the petitioner representation dated 29.07.2022 for his internship at fifth respondent college as MBBS Student from June 2022 till May 2023.

PRAYER IN W.P.No. 30425 of 2022: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to Clause 15(vii) of the Government Order in G.O.(MS) No. 71 Health and Family Welfare (MCA-2) Department dated 02.03.2018 issued by the second respondent in so far it relates to eligibility of the claim of stipend during compulsory rotatory residential internship period for the petitioner, quash the same and consequently direct the respondents herein to disburse the compulsory rotatory residential internship stipend forthwith to the petitioner for his internship at fifth respondent college as MBBS student from June 2022 till May 2023.

For Petitioner in both
Writ Petitions :: Mr. G.Magesh Kumar

For 1st Respondent in
both Writ Petitions :: Mr.B.Rabu Manohar
SCGC



For RR 2, 4 & 5 in
both Writ Petitions

:: Mr.J.Ravindran (AAG)
Assisted by Ms. Raja Rajeswari
Government Advocate

For 3rd Respondent in
both Writ Petitions

:: Ms. Shubha Ranjani Ananth
Standing Counsel

COMMON ORDER

Both the Writ Petitions have been filed by the same petitioner M.Govindarasu, resident of Shenoy Nagar, Chennai. The respondents in both the Writ Petitions are also the same. The issues also surround the same claim made by the petitioner for grant of stipended by the respondents to the petitioner herein.

2. Since the arguments also over lapped, common order is being passed.

3. On an earlier occasion, the matter came up for hearing before this Court on 25.01.2023. On that date, on hearing the learned Senior Counsel on behalf of the petitioner, the following order was passed by this Court:-



“The petitioner, student was accommodated in the Government colleges consequent to the directions of this Court in an earlier writ petition. That direction was given, since the college, wherein the petitioner joined, Annai Medical College and Hospital, Pennalur, Sriperumbudur, had been declared as an institution, which is not recognized to admit students.

2.A learned Single Judge, had therefore, directed that the students should be absorbed in Government Medical Colleges. They have also been absorbed. While passing orders absorbing them, for reasons which, I am unable to decipher, the Government had passed an order stating that they are not eligible for stipend.

3.I am not able to appreciate the rationale behind that particular rejection of claim for stipend. They are also medical students now in the fold of Government Medical Colleges. The Government should take necessary decision in proper perspective.



There cannot be one group of students, who are given stipend and another group who are denied stipend, merely because they had joined under the directions of the Court. If the Government has any apprehension whether to pay stipend or not, they could have very well approached the Court and sought clarifications on those particular aspects.

4.Let the learned Additional Government Pleader, get necessary instructions. At any rate, orders shall be passed on 03.02.2023. ”

4. The matter had been again listed today.

5. Mr.R.Sidharth, learned Central Government counsel appearsg on behalf of the first respondent.

6. The learned Additional Advocate General had advanced arguments on behalf of the respondents, 2, 4 and 5 in both Writ Petitions.



7. The first Writ Petition, namely, W.P.No. 20211 of 2022 had been filed in the nature of Mandamus seeking a direction to the respondents to disburse the monthly stipend to the petitioner in accordance with his representation dated 29.07.2022 for having done his internship at the fifth respondent college, namely, The Government Theni Medical College, Theni, as stipend M.B.B.S study from June 2022 till May 2023.

8. The second Writ Petition in W.P.No. 30425 of 2022 had again been filed by the same petitioner in the nature of certiorarified Mandams calling for the records relating to a Government Order in G.O.Ms.No. 71 Health and Family Welfare (MCA-2) Department dated 02.03.2018 particularly Class 15(vii) issued by the second respondent, the Principal Secretary, Ministry of Health and Family Welfare, Tamil Nadu, Fort St. George, Chennai. It relates to eligibility to claim the stipend during compulsory rotatory residential internship period and to quash the said clause in the said Government Order.

9. The petitioner in his affidavit stated that he had joined Annai Medical College and Hospital, Pennalur, Sriperumbudur at Chennai during the academic year 2016-2017 as a MBBS student. When he was about to



continue to the second year, the Government of India declined to confirm the letter of permission granted to the said college. Therefore, the Government debarred the said college. The petitioner and other students filed W.P.No. 25215 of 2017 and an order was passed on 12.12.2017.

10. It was stated that the students could be transferred from the said college, namely, Annai Medical College and Hospital to Government medical colleges. The petitioner claims that there cannot be any discrepancy as between the students, who are so accommodated in other colleges. The petitioner along with other students were accommodated at the Government Medical College at Theni. He joined and completed his final year in the said college. During the year 2020, owing to various circumstances, he could not appear for the examination but he cleared the same in September 2021. At the time, when he filed the first Writ Petition, he was doing his internship. The petitioner claimed that he was paying yearly fees by getting loan from the Canara Bank, Karimangalam Branch, Dharmapuri District. He stated that his internship started from June 2022, and he was supposed to receive stipend. He had sent a representation. Claiming that no action had been taken on the representation, he had filed the first Writ Petition.



11. The second Writ Petition was a follow up of the first Writ Petition consequent to the knowledge of the petitioner that in G.O.Ms.No. 71 Health and Family Welfare (MCA-2) Department dated 02.03.2018, the Government had informed that the students of Annai Medical College and Hospital can be treated as non-stipendiary candidates during their Compulsory Rotatory Residential Internship Period and that they are not eligible to claim stipend during their Compulsory Rotatory Residential Internship Period and that they will not be eligible for transfer to other Medical Colleges during Compulsory Rotatory Residential Internship Period.

12. The grievance of the petitioner is that while other students obtained stipend, the petitioner was denied the same. The petitioner therefore claimed that the said clause denying payment of stipend should be interfered with by this Court.

13. This Court in the order dated 25.01.2021 had observed that there could not be any sub class within a group and wondered as to how the students who have been transferred could be denied with payment of stipend.



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14. The respondent were directed to answer that particular issue.

15. The learned Additional Advocate General pointed out the undertaking given by the petitioner when he joined the Government Medical College at Theni. Among other undertakings, the petitioner herein specifically undertook as follows:-

“I am not eligible to claim stipend during the Compulsory Rotatory Residential Internship period as is the case of Government Medical College students.”

16. His father G.Madeshan had also counter signed the said undertaking.

17. It is thus seen that the petitioner, had given such an undertaking declining to receive stipend. The Court cannot therefore call upon the respondents to grant stipend when the petitioner himself had given an undertaking that he would not claim stipend.



18. The learned counsel for the petitioner urged that the Court should appreciate the position in which the said undertaking was given, namely that the original college where the petitioner had joined, Annai Medical College had been debarred and the petitioner had to be transferred to other Government College. Owing to that particular fact, it was stated that the undertaking was given at a time when the petitioner was in a position where he had to abide by the conditions imposed by the respondents. But most certainly after signing the particular undertaking if at all the petitioner had any grievances, at an earlier time he could have raised his objections. But he had continued with his studies, completed his course and thereafter while undergoing internship had raised this particular issue. It is not for this Court to examine whether the undertaking was given out of free will or consent. It has to be examined whether the respondents had taken all these aspects into consideration and had thereafter called upon the petitioner to give such an undertaking. The father of the petitioner had also counter signed the said undertaking. It is also seen that this is just one undertaking out of several others given by him. He had given an undertaking about the tuition fees which had been fixed at 3.25 lakhs every year specifically for the students, who are transferred from Annai Medical



College and Hospital and that he would pay the said fees and that the said fees do not include hostel, transport and mess charges and he had undertaken that he would abide by the rules and regulations of the Government of Tamilnadu, Directorate of Medical Education. He had understood that he would have to write II year MBBS examination only on completion of the required period of attendance. He had also stated that he was not eligible for transfer during the Compulsory Rotatory Residential Internship period. He had understood that his admission is liable to be cancelled at any point of time without notice. These are the undertaking given by him. The primary aim to be understood is that the Court had stepped in the first place to accommodate him in a Government College and open their arms and accommodated him. He should complete his course and do service to the general public and use the specialisation in which he had qualified so that a few needy people would get some solace for from illnesses which had afflicted them. The petitioner may not concentrate on aspects which would divert his mind from the main object of his life, namely, to serve the people as a medical professional.



19. Unfortunately, I am not able to grant the relief sought. There cannot be a direction to the respondents to consider any representation going against the earlier undertaken given by the petitioner herein. Specifically the clause which calls into question in W.P.No. 30425 of 2022 is not a clause contained in the Government Order in G.O.Ms.No. 71 dated 02.03.2018. The petitioner should abide by the conditions and more particularly his own undertaking.

20. With the above said observation, the Writ Petition stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.02.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



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C.V.KARTHIKEYAN, J.,

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