



W.A.No.171 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

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and

C.M.P.No.1662 of 2023

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Secretariat, Chennai - 600 009.

2.The Secretary to the Government,
Finance Department,
Fort St. George,
Secretariat, Chennai - 600 009.

3.The Director of Public Health and Preventive Medicine,
Teynampet, Chennai - 600 006.

4.The Deputy Director Health Services,
Thiruvallur,
Health Unit District, Tiruvallur District.

... Appellants

Vs.



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1.Dr.T.M.Vidhya

2.Karpaga Vinayagar Medical College
Chinnakolambakkam,
Maduranthakam,
Kancheepuram.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 12.01.2022 passed by the learned Judge in W.P.No.17041 of 2021.

For Appellant : Mr.J.Ravindran
Additional Advocate General
assisted by Mrs.S.Antiha, SGP

For Respondents : Mr.Singaravelan
Senior Counsel
for M/s.S.Mahendran (R1)
No appearance (R2)

JUDGMENT

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

This writ appeal has been filed by the appellants/State assailing the order passed by the learned Judge in W.P.No.17041 of 2021, on 12.01.2022.

2.The respondent herein has filed the aforesaid writ petition for issuance of writ of Certiorarified Mandamus to call for the records in



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connection with the order passed by the first appellant in G.O.Ms.No.46 Health and Family Welfare (B1) Department dated 07.02.2020, quash the same as far as the respondent is concerned, and direct the appellants to grant salary to the respondent like the candidates those who are secured admission in the post graduate degree/ diploma and Super Speciality / Broad Speciality course in the Self financing Private Medical College from Government Medical colleges and thereby treat equally those who are completing the PG in the self finance college without any discrimination.

3.The learned Judge has allowed the writ petition along with two other writ petitions, by the order impugned herein, the operative portion of which reads as follows:

“48.Under these circumstance, the impugned G.O. is liable to be declared arbitrary, discriminatory and ultravires the Constitution of India and relaxation in the Fundamental Rules. These writ petitions therefore deserve to be allowed with consequential relief to the petitioners.

49.The respondents are therefore directed to pay arrears of salary and other attendant benefits to the petitioners on par with those in-service candidates who are pursuing similar course at subsidized in Government Colleges/ Institutions. This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order.”

The aforesaid order of the learned Judge is put to challenge in this writ



4.The facts and circumstances of the case leading to filing of this appeal, according to the appellants, are as under:

4.1. The respondent was appointed as Assistant Surgeon on 13.09.2013 in the Tamil Nadu Medical Services by way of Notification issued by the Tamil Nadu Medical Service Recruitment Board and she had worked at several Primary Health Centres. While so, she had applied for NEET examination on 05.01.2020 for pursuing Post Graduate Degree and after clearing the NEET, she had joined in Karpaga Vinayaka Medical College, Chinnakolambakkam, Maduranthakam, Kancheepuram, for the course of Doctor of General Medicine (MD). During the period of study, she had been denied salary benefits, whereas their contemporaries and batchmates who were undergoing similar P.G. Degree/Diploma Course in Government Colleges / Institutions have been given the benefit of salary. As per G.O.Ms.No.94 Health and Family Welfare Department dated 01.03.2016, the Medical Officer in the Tamil Nadu Medical Services undergoing P.G. Courses in Self Financing Institutions have been paid pay and allowances on par with the in-service candidates undergoing P.G. Degree in Government



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Colleges, but on condition that they have to execute a bond and furnish an undertaking that they will work in the Government Medical Institutions till their superannuation after completion of course and any future increase in fee as fixed by the Fee Committee will be met only by them. Thereafter, G.O.Ms.No.63 Health and Family Welfare (B1) Department dated 07.03.2017 came to be issued, by which the benefits of salary and other service benefits were extended to the Government Medical Officers undergoing P.G. Medical Course in Self Financing Medical Colleges from the year 2013 onwards. While so, the Government issued G.O.Ms.No.46 dated 07.02.2020 reversing the decision taken earlier and pursuant to the said G.O., the persons like that of the respondent undergoing P.G.Courses in Self Financing Private Medical Colleges, were denied salary and other service benefits during the period of study. Challenging the same, the respondent filed W.P.No.17041 of 2021, which was allowed by the learned Judge, by the order impugned in this writ appeal. Therefore, the appellants are before this court.

5.The learned Additional Advocate General appearing for the



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appellants / State submitted that the respondent / writ petitioner who is working as Medical Officer in Tamil Nadu Medical Service, is pursuing Post Graduate Degree / Diploma courses in self financing Medical Colleges, and hence, she is not eligible for sanction of salary, whereas Medical Officers in Tamil Nadu Medical Service who are undergoing Post Graduate Degree / Diploma courses in Government Colleges / Institutions are eligible for stipend in the form of salary. Elaborating further, the learned Additional Advocate General submitted that the curriculum of the Post Graduate course / Diploma course for the medical doctors is framed in such a way that most of the course is being conducted by way of learning by training / practicing and as such, the medical officers in Tamil Nadu Medical Service, who pursue post Graduate / Diploma students doing course in Government Medical Colleges, are working in Government Medical Institutions during their Post graduate study period and their services in their entire period are being utilised by the Government for providing free services to the poor public. Hence, these candidates are paid stipend in the form of salary. But, the services of Medical Officers in Tamil Nadu Medical Service, who pursue post graduate / Diploma students in self finance / Private Medical Colleges



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do not serve in Government Medical Institutions during their study period and their services are being utilised by the self finance / Private Medical Colleges for giving paid services to the patients preferring private health care institutions for their ailments. Thus, according to the learned Additional Advocate General, the Medical Officers pursuing Post Graduate Degree / Diploma in Self Financing Private Colleges cannot be considered on par with Medical Officers in Tamil Nadu Medical Service pursuing PG / Diploma Course in Government Medical Colleges, merely on the ground that both are doing PG/Diploma Courses.

6.It is also submitted by the learned Additional Advocate General appearing for the appellants that though the Medical Officers in Tamil Nadu Medical Service in Government Medical Colleges are relieved from the Government Service for the period pursuing PG courses, their services are being utilized by the Government machinery during the period of their PG course and as such, they are candidates / Medical Officers in Government service. On the other hand, the Medical Officers in Tamil Nadu Medical Service pursuing Post Graduate Degree / Diploma candidates in Self



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Financing Private Colleges are being relieved from the Government service to the private institutions, so as to render their service only to private institutions and their practice and service during that period are utilized by the private institutions for rendering paid service in private health care institutions. Therefore, if payment of salary is made by the Government to the Medical Officers in Tamil Nadu Medical Service who pursue Post Graduate Degree / Diploma candidates in Self Financing Private Colleges, it will result in heavy financial burden to the exchequer. Referring to Rules 3(ii) and 84 of the Tamil Nadu Study Leave Rules, 1965, the learned Additional Advocate General submitted that study leave is not being provided for pursuing studies in academic subjects like Medical and Nursing Courses, as Tamil Nadu Study Leave Rules, have overriding effect on the rules being followed before 1965 in the sphere of study leave rule provisions. Adding further, it is submitted that top most meritorious students among the Medical Officers in Tamil Nadu Medical Service opt for Government colleges for obtaining better exposure so as to enrich their knowledge and experience and to utilize their meritorious services in Government Medical Institutions during their study period and therefore, the payment of full salary



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to the in-service PG / Diploma students in Government Medical Colleges is justified. It is also pointed out that for the in-service candidates doing course in Government Medical Colleges, vigorous training is given and they have been extracted strenuous works to serve the poor and the needy patients who are approaching Government Hospitals. The learned Additional Advocate General further submitted that the in-service candidates doing course in self-financing Private Colleges are eligible for stipend as per National Medical Council norms and the Government is in no way connected to those students during that period. Without considering all these factors, the learned Judge erred in allowing the writ petition, by directing the appellants to pay salary on par with the candidates working in the Government colleges, by the order impugned herein, which will have to be set aside.

7.Per contra, the learned counsel for the respondent submitted that Clause 8(iii) of G.O.Ms.No.46, is discriminatory, unfair, arbitrary, against law and the principles of natural justice, as it discriminates the in-service candidates who secured admission through Government counseling in Post Graduate Degree / Diploma and Super Speciality Courses in Self Financing



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Private Medical Colleges and that of Government Colleges. All the in-service candidates are being selected through NEET and they are allotted to either Government Medical College or Self Financing Private Medical College in accordance with the rank secured in the NEET examination and therefore the G.O. sanctioning salary to in-service candidates studying in Government Medical College including Raja Muthiah Medical College, Annamalai University, Chidambaram and not sanctioning salary to in-service candidates studying in Self Financing Private Medical Colleges, is discriminatory and not in accordance with law. He finally submitted that the learned single Judge has taken note of all the facts and circumstances of the case, principles of natural justice, equity and fair play while passing the order and hence the same does not require any interference in the hands of this Court.

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

9.The respondent in this appeal has preferred the writ petition to



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challenge the order in G.O.Ms.No.46 dated 07.02.2020 passed by the first respondent, and to direct the appellants to grant salary to her during the course of study. The learned Judge has allowed her claim, by the order impugned herein, against which, the present appeal has been preferred by the Department.

10.The main contentions put forth on the side of the Government for non-payment of salary to the in-service candidates undergoing P.G.Medical Course in Self Financing Private Medical Colleges are that those in-service candidates are eligible for stipend as per National Medical Council norms and the Government is in no way connected to those students during that period; that the in-service candidates doing course in self-financing Private Colleges pursue higher studies at their own cost as they would do their service during the study period for the betterment of patients of private institution which provides paid service to the public. It is further contended that the in-service candidates pursuing higher studies in Government Medical Colleges are paid salary, since their services are utilized by the Government. Likewise, the services of the in-service candidates pursuing



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higher studies in Self-financing Private Medical Colleges are being utilized by the Private Medical Colleges for providing paid services to the public and hence, they have to be paid only by the private medical colleges / institutions.

11.Earlier, in view of the shortage of Post Graduate qualified Medical Officers to be placed in the medical colleges in the sanctioned posts and also as per Medical Council of India norms, G.O.Ms.No.94 Health and Family Welfare (B1) Department dated 01.03.2016 was passed by the Government of Tamil Nadu, wherein the Medical Officers in the Tamil Nadu Medical Services undergoing Post Graduate Degree / Diploma / MCh Courses in Self Financing Institutions, on selection through the Selection Committee / Single Window System have been allowed to be paid salary and other allowances on par with other Service Candidates undergoing Post Graduate Degree / Diploma / MCh Courses in Government Medical Institutions, of course subject to the conditions such as executing bond etc. Thereafter, G.O.Ms.No.63 Health and Family Welfare (B1) Department dated 07.03.2017 was passed by the Government of Tamil Nadu, wherein it has



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been ordered to treat the study period of 29 Medical Officers in Tamil Nadu Medical Service undergoing Post Graduate Degree / Diploma / MCh courses from the year 2013-14 and the 82 Medical Officers in the Tamil Nadu Medical Service undergoing Post Graduate Degree / Diploma / MCh courses from the year 2014-15 in self financing institutions as 'On Duty' for the purpose of salary with retrospective effect from the year of joining by creation of 29 supernumerary posts from the year 2013-14, of course with conditions such as they should work in the Government till their superannuation etc. However, the Government passed G.O.Ms.No.46 Health and Family Welfare (B1) Department dated 07.02.2020, by which the in-service candidates who secure admission in the Post Graduate Degree / Diploma Courses either through the All India Quota or through the Single Window System of counselling conducted by the Selection Committee in Government Medical Colleges including Raja Muthiah Medical College, Annamalai University, Chidambaram as well as the in-service candidates who secure admission in the Post Graduate / Super Speciality / Broad Speciality Degree Courses through the counselling conducted by the Director General of Health Services in Government Medical Colleges including Raja



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Muthiah Medical College, Annamalai University, Chidambaram, have been sanctioned salary from the year 2017-2018 onwards. While so, the in-service candidates who secure admission in the Post Graduate Degree / Diploma and Super Speciality / Broad Speciality Courses in self financing private medical colleges either through the Single Window System of counselling conducted by the Selection Committee or through the All India Quota or through the Director General of Health Services, New Delhi, have not been sanctioned salary during the period of study. Thus, the Government has reversed the decision taken earlier and therefore, the persons like that of the respondent herein undergoing P.G.Courses in Self Financing Private Medical Colleges were denied salary and other service benefits during the period of study.

12.As rightly put forth on the side of the appellants, the services of the respondent are not utilized by the Government unlike the in-service candidates who undergo higher studies in Government Medical Colleges whose services are being utilized by the Government fully. Since their services are fully utilized by the Private Medical Colleges for the betterment of patients of private institutions which provides paid service to the public, it



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is for the institutions where the in-service candidates / Doctors are undergoing higher studies, to necessarily pay their salary during their period of study in the institution and the said salary should be on par with the Government Doctors. In this connection, it would be appropriate to refer to Regulation 13.3 of the Medical Council of India Post Graduate Medical Education Regulations, 2000, which states that the Post Graduate students of the institutions which are located in various States / Union Territories has to be paid remuneration at par with the remuneration being paid to the Post Graduate students of State Government Medical Institutions / Central Government Medical Institutions in the State / Union Territory in which the institution is located. Further, as per the advisory released on 24.08.2023 by the Post Graduate Medical Education Board in File No.NMC/PG/Legal/2023/(21033)/048792, it was made clear that payment of remuneration should be on par with the Government Institutions and the same shall be paid by the Private Medical College. In ***Registrar, Mahatma Gandhi Medical College and Research Institute and another v. D. Rajasree and Others [2023 SCC OnLine Mad 5211]*** the first bench of this court has categorically observed that *the payment of stipend being a*



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statutory liability of the College, it would not be open for the College to deny the payment of the same to the students. On the contrary, they are duty bound and have legal obligation to pay the said amount to the students and cannot deny the same on the ground of equitable set-off, even when the amount that is sought to be claimed by the Colleges is not yet ascertained.

Thus, the principle laid down is that there should be no discrimination between the in-service candidates undergoing PG Medical Course in the Government Colleges and in-service candidates undergoing PG Medical Course in the Private Medical Colleges. Therefore, this court is of the opinion that the institution, where the respondent / writ petitioner is pursuing her post graduate course, is bound to pay stipend in the form of salary to her, on par with the medical officers, pursuing PG course in the Government colleges/ institutions, during the course of study.

13. At this juncture, it is important to point out that the learned counsel for the respondent / writ petitioner, during the course of argument, submitted that the respondent / writ petitioner was relieved by the Government Primary Health Centre, Tiruvelangadu on 31.07.2020 and she joined the course of Doctor of General Medicine in Karpaga Vinayaka Medical College,



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Chinnakolambakkam, Maduranthakam, Kancheepuram, second respondent herein; and that, she was not paid any amount towards salary or stipend either by Government of Tamil Nadu or second respondent, from the month of August 2020 to till date. The learned counsel has filed the affidavit of the respondent / writ petitioner to that effect.

14.In view of the foregoing, this court has no hesitation to hold that the institution, where the first respondent is serving, must necessarily effect payment of salary to the first respondent herein, on par with the Government Colleges during the period of study. As such, this court directs the first respondent to submit a representation seeking stipend / salary along with arrears indicating the amount payable, from the date of her joining the course in the Private Institution, till date, to the second respondent / Private Institution, within a period of two weeks from the date of receipt of a copy of this judgment. On such filing by the first respondent, the second respondent shall consider the same and pass appropriate orders, with regard to payment of salary / stipend to the incumbent during the period of study, within a period of four weeks thereafter. It is made clear that stipend, if any, paid by



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the institution shall be adjusted while making such payment.

15. Accordingly, the impugned order passed by the learned Judge stands modified and the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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

15.11.2023

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1. The Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Secretary to the Government,
Finance Department,
Fort St. George,
Secretariat, Chennai - 600 009.
3. The Director of Public Health and Preventive Medicine
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4. The Deputy Director Health Services, Thiruvallur
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MOHAMMED SHAFFIQ, J.

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