



WA No.2353 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

WA No.2353 of 2023

and CMP Nos.19915, 19917 and 19918 of 2023

S.Keerthana

... Appellant

-VS-

1. The Jawaharlal Institute of Postgraduate
Medical Education & Research (JIPMER)
Rep. by its Director, Gorimedu,
Dhanvantari Nagar, Puducherry 605006.

2. The Dean (Academics),
Academic Section, JIPMER,
Gorimedu, Dhanvantari Nagar,
Puducherry 605 006.

3. The Dean,
College of Nursing,
Christian Medical College (CMC),
Vellore-4.

... Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order dated 23.08.2023 in 24477 of 2023 on the file of this Court.

For the Appellant : Mr.Stalin Abhimanyu



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WEB COPY For the Respondents : Mr.M.T.Arunan
for RR 1 and 2
; Mr.Krishna Srinivasan
Senior Counsel
for M/s.S.Ramasubramaniam &
Associates for R-3

* * * * *

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.Stalin Abhimanyu, learned counsel for the appellant, Mr.M.T.Arunan, learned counsel for respondent Nos.1 and 2 and Mr.Krishna Srinivasan, learned senior counsel for respondent No.3.

2. The appellant had filed a writ petition bearing W.P.No.24477 of 2023 seeking directions against the third respondent institution to issue Transfer Certificate, Transcript Certificate, Experience Certificate and Course Completion Certificate to the appellant.

3. The appellant had joined the B.Sc. (Nursing) course with the third respondent institution. At the time of admission, a bond was executed by the appellant that she would serve with the third



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respondent for two years. The appellant had completed the course on 07.02.2021. The appellant was immediately issued with an appointment order to serve the respondent No.3 for two years in terms of the bond.

4. The appellant had appeared for the examination of the post graduate course, has passed the same and was offered admission in the first and second respondent institution. The appellant has not been issued with the Transfer Certificate, Transcript Certificate, Experience Certificate and Course Completion Certificate on the ground that the appellant has not yet served for two years with the third respondent institution.

5. The learned Single Judge dismissed the writ petition on the ground that the appellant has to mandatorily serve two years with the third respondent institution as a condition of the bond. The said judgment is assailed in the present appeal.

6. The learned counsel for the appellant submits that the appellant is ready to serve the respondent No.3 for two years. She



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has got admission in respondent No.1 institution for post graduate course. After completion of the post graduate course, the appellant would render the service to respondent No.3 for the remainder period and the appellant in her affidavit has undertaken to that effect. The appellant is also ready to deposit the amount of stipend which the appellant would have received for the remaining months. The stipend received by the appellant is Rs.25,000/- per month.

7. The learned counsel for the appellant further submits that in fact the contingency had arisen because of the Covid-19 pandemic. If Covid-19 pandemic would not have struck the nation, the third respondent would be required to conduct the examination in August 2020 and the appellant would have completed the course in August 2020 and by now, would have completed the service period as per the bond. But, because of the Covid-19 pandemic, the examination was conducted in December 2020 - January 2021 and the appellant was directed to serve since February 2021 in terms of the bond.

8. According to the learned counsel, the condition of bond is harsh. There is no exit clause provided in the bond which is also



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improper. According to the learned counsel, in view of the Covid-19 pandemic and lockdown, the UGC had laid down guidelines on examination and academic calendar for the Universities. The year was to end on 14.08.2020. The calendar was suggested for the academic session 2020-21 and the same was to end by 30.07.2021 and the next academic session was to start from 02.08.2021. If that would have been followed, then the appellant would have completed the course within time, that is August 2020. However, the same was not adhered to.

9. The learned counsel relies upon the judgment of the Apex Court in the case of **Rakesh Kumar Agarwalla vs. National Law School of India University**, reported in **(2021) 1 SCC 539 (paras 90 to 94)**. In the said judgment, the UGC guidelines issued during Covid-19 pandemic were also considered. It was observed that the academic year 2020-21 is not a normal academic year in which universities are expected to carry on their teaching and other activities in normal mode and manner. It was observed that the academic year 2020-21 was required to be declared as "zero-year" even if the course starts in mid of October 2020. According to the learned counsel, the



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opportunity to the appellant to undergo the post graduate course is once in the lifetime. The appellant has got admission to post graduate course in the prestigious respondent Nos.1 and 2 after successfully passing the competitive examination.

10 We have heard Mr.M.T.Arunan, learned counsel for respondent Nos.1 and 2 and Mr.Krishna Srinivasan, learned senior counsel for the respondent No.3.

11. The learned senior counsel for respondent No.3 submits that the bond does not contain the exit clause. The candidate has to necessarily and mandatorily serve for two years after the course is completed. The fees charged by respondent No.3 is a paltry sum of Rs.810/-. Even the Government Colleges of Nursing charge fees of more than Rs.25,000/- to Rs.30,000/-. The respondent No.3 institution is a service-oriented institution. It is with a view that service is required to be rendered to the poor people, the education is imparted at a subsidised rate to the students and as such, the condition is imposed that they shall serve for two years with the respondent No.3 institution. No commercial approach exists on the



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part of respondent No.3. The terms of the bond are clear. They have to be adhered to.

12. The learned senior counsel relies upon the judgment of the Apex Court in a case of ***Association of Medical Superspeciality Aspirants and Residents vs. Union of India***, reported in **(2019) 8 SCC 607**. It is submitted that the Apex Court has held that the service bonds to serve for a particular number of years do not violate Articles 14, 19, 21 and 23 of the Constitution. He also relies upon the various orders passed by this Court in the cases of ***S.Austine Blessie vs. Dr.MGR Medical University***, reported in **2018 SCC OnLine Mad 3148** and ***State of Tamil Nadu vs. P.S.Sairam***, reported in **(2020) 7 Mad LJ 513**.

13. It is further submitted by the learned senior counsel for the third respondent that the appellant with his open eyes took admission with the respondent No.3 institution. In the prospectus also, it is specifically stated that all candidates admitted to the programme will have to undertake the service obligation to work in an area of need for a period of two years after completion of training. The candidates



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chosen under the open category will serve in areas of need identified by the Christian Medical College, Vellore, the third respondent herein.

Now the appellant cannot turn around and contend otherwise. It is further submitted that even if the appellant gives an undertaking that after completion of the post graduate course, she will serve for the remainder period, the experience of respondent No.3 is otherwise that the candidates, after leaving, would never turn back and render the service.

14. We have considered the submissions canvassed by the learned counsel for the parties.

15. The factual matrix is not disputed. The only question would be whether to allow the appellant to join the post graduate course for which the appellant has secured admission, though five months service as per the bond has remained to be served by the appellant.

16. The bond executed by the appellant does not contain an exit clause. The bond requires the appellant to serve after completion of the course for a period of two years with respondent No.3. There is



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no clause that if the appellant jumped the bond, she will have to pay any amount to respondent No.3 institution.

17. It also appears that respondent No.3 is charging a very meagre amount as tuition fee, that is, Rs.810/- annually. The same would be less than the fees charged by the Government Colleges of Nursing. The amount of fee charged from the students is meagre and the default clause is not incorporated in the bond, that would make the candidates serve mandatorily with respondent No.3 institution.

18. It has been observed in the case of ***Association of Medical Superspeciality Aspirants and Resident*** (supra) by the Apex Court that the service bonds to serve for a particular number of years and in default to compensate the Government by paying some lakhs of rupees do not violate Articles 14, 19, 21 and 23 of the Constitution, rather the State Government in imposing such service conditions fulfilled the constitutional obligation under Articles 21 and 47 of the Constitution. In the present case, there is no default clause and/or exit clause. The service bond which mandatorily requires the candidate to serve for a period of two years without an exit clause



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could be violative of Articles 14, 19, 21 and 23 was not the subject matter of consideration before the Apex Court in the said case.

19. In the present case, we would certainly not have accepted the case of the appellant, however, considering the exigency, that is, the course being extended because of the Covid-19 pandemic and the appellant having secured admission to the post graduate course and only 4½ to 5 months of service period having remained to be served, we have considered the present case. It is not that the appellant did not volunteer to serve with the respondent No.3 institution after completion of the course. She is serving with the institution since 07.02.2021. She has served for more than one year and 7 months. 4½ to 5 months of service bond period remains. If the course would have been completed within the time line, the appellant would have completed the course in August 2020 and by this time, would have been freed of the bond.

20. We also are alive to the noble cause the respondent No.3 is rendering service to the poor people. The appellant has to render the service for the remainder period with respondent No.3. However, a



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balance will have to be struck in view of the peculiar facts and circumstances of the present case.

21. As we have observed supra. we would not have entertained the petition if it would have been under the normal facts of the case, however, considering the following factors, we have entertained the petition:

(1) Because of the Covid-19 pandemic, the term was extended.

But for Covid-19 pandemic, the appellant would have completed the course in August 2020 and by this time, i.e., August 2023, would have completed the bond period. However, because of the Covid-19 pandemic, the examination was delayed by six months and it is only in February, 2021, the course could be completed and the appellant was issued with the appointment order to serve with respondent No.3 for a period of two years;

(2) The appellant has already served for one year and 7 months with respondent No.3 and hardly, 4½ to 5 months of service has remained;

(3) The appellant is selected for post graduate course after a



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competitive selection process;

- (4) The appellant has undertaken to pay the stipend for the remaining period as a deposit and further has undertaken to serve with the respondent No.3 institution for the remainder period after completion of the post graduate course.

21. In light of the above, we pass the following order:

Respondent No.3 shall issue the Transfer Certificate, Transcript Certificate, Experience Certificate and Course Completion Certificate to the appellant immediately after the appellant deposits a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) with respondent No.3. The said amount shall be a deposit. The appellant shall, after completing the post-graduate course, render service for the remainder period with respondent No.3. The respondent Nos.1 and 2 shall not hand over the Course Completion Certificate to the appellant unless the appellant renders the remainder service with respondent No.3. It is only after the certificate is issued by respondent No.3 of the appellant having rendered service for the total period of two years, the respondent Nos.1 and 2 shall hand over the Course Completion



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Certificate and the Post-graduate passing certificate to the appellant.

After the appellant renders the service of the remainder period, the respondent No.3 shall refund the amount of Rs.1,50,000/- (Rupees one lakh fifty thousand only) to the appellant.

With the aforesaid directions and observations, the writ appeal is disposed of. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(P.D.A., J.)

14.09.2023

Index : Yes/No
Neutral Citation : Yes/No
sra

To

1. The Director,
Jawaharlal Institute of Postgraduate
Medical Education & Research (JIPMER)
Gorimedu, Dhanvantari Nagar, Puducherry 605006.
2. The Dean (Academics),
Academic Section, JIPMER,
Gorimedu, Dhanvantari Nagar,
Puducherry 605 006.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(sra)

3. The Dean,
College of Nursing,
Christian Medical College (CMC),
Vellore-4.

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