



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Pronounced on : 10.10.2023

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.34942 of 2022
and W.M.P.No.34376 & 34377 of 2022

Dr.F.Biravinth Solomon M.S

.. Petitioner

Versus

1.Christian Medical College
Rep by its Principal
Vellore – 632 002

2.National Medical Commission
Rep by its Secretary
Pocket-14, Sector-8
Dwarka Phase-1
New Delhi – 110 077

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order of termination dated 23.03.2022 and quash the same and direct the 1st respondent herein to treat the petitioner as a student and not an employee and permit the petitioner to complete the M.Ch Course in Cardio-Thoraic Surgery.

For Petitioners

: Mr.V.Prakash, Senior Advocate
for Mr.R.Vignesh



WEB COPY



For Respondents : Mr.Krishna Srinivasan, Senior Counsel
for M/s.S.Ramasubramanian & Associates - R1

Mrs.Subhrajani Anandh for R2

ORDER

This writ petition has been filed challenging the order terminating the petitioner from the respondent medical hospital in a departmental proceedings conducted against him.

2. The petitioner is a qualified doctor completed Post Graduate degree in the field of M.S.(General Surgery) from Madurai Medical College. Thereafter, he has applied for Super Speciality course for Cardio Thoraic Surgery in the academic year 2018-2019. As per the mark obtained in NEET, he was granted admission for the Master of Chirurgiae course for the field of Cardio Thoraic Surgery. While so, a charge memo was issued for the alleged late attendance as well as violating the conditions of the college, thereafter, he has been placed under suspension and a departmental enquiry has been conducted and he has been terminated from college. Hence, the same has been challenged mainly on the ground that the entire termination order cannot be sustained in the eye of law.



3. It is the contention of the learned counsel for the petitioner that the entire disciplinary proceedings are without any jurisdiction and there is no master and servant relationship exists between the petitioner and the college. The petitioner is only a student pursuing his Post Graduate Degree in the respondent college. The petitioner has qualified in the NEET, he was allotted to the respondent college and stipend payable by the respondent college as per the directions and regulations of the NMC. Therefore, it is the contention that merely because the stipend is paid by the respondent college, the same cannot be treated as salary at any stretch of imagination. Under the pretext of disciplinary proceedings, right of the petitioner who have qualified under the NEET to pursue his final year examinations cannot be taken away by the College Management. Hence, it is the contention that entire order cannot be sustained in the eye of law.

4. It is the contention of the first respondent that the petitioner was appointed as a resident doctor on 08.09.2019. The appointment order has been issued by the Principal of the College and in the said appointment order, it is stated that the petitioner will be bound by the regulations of the Institution and he is also paid with stipend. The petitioner found not up-to the



mark while discharging the duties as Senior Postgraduate resident and on several occasion, the Consultant Surgeon have attempted to guide the petitioner with techniques and procedures, however, the petitioner was unwilling to learn and desisted from making an effort to improve his surgical and other ancillary skills required from a doctor at the super speciality level. Several complaints were received against the petitioner such as i) consistently being late to work despite repeated warning letters issued from the department, (ii) regularly being absent from the work place during working hours for long period of time and were not contactable during your absence from work place, (iii) wilfully absent from duty without any prior permission or approval from the superiors, (iv) that while on ICU duty, neglecting patients who were under his care, (v) not behaving in a professional manner with patients and using inappropriate language to patients, (vi) being argumentative and unwilling to accept instructions from senior faculty on many occasions and verbally abusing some of the senior consultants, (vii) surgical skills and judgment skills being far inferior to what should be expected from MS General Surgery Post Graduate doctor, (viii) Borrowed valuable and rare books worth several thousands of rupees and did not return the same.



5. Further, it is the contention that despite several warnings, the petitioner's behaviour did not improve. Therefore, charge memo is issued and the departmental proceedings have been conducted after examination of the witnesses, he has been terminated. Hence, it is the contention that in the appointment order itself, it is stated that the regulation of the institution will apply and the petitioner cannot contend that there is no relationship such as the employer and employee. Hence, termination order is well in order.

6. It is the contention of the second respondent that as per the Regulation 10(1) of the Postgraduate Medical Education Regulations, 2000, the period of training for M.Ch course shall be three completed years including the examination period. As per Regulation 13.2 of the Postgraduate Medical Education Regulations, 2000, all candidates joining Postgraduate/Super-Speciality Training shall work as Full-Time Residents for the period of training and shall not attend less than 80% of imparted training during academic term of six months including assignment, assessed full time responsibilities and participation in all facets of the educational process.



7. Further, the Regulation 13.3 of the Postgraduate Medical Education Regulations, 2000 provides that the Postgraduate/Super Specialty students shall be paid stipend as being paid to Postgraduate/Super-Specialty students of the State Government Medical Colleges in the State Union Territory where the said medical college is situated. A similar provision is applicable in respect of the matter of grant of leaves to Postgraduate / Super-Specialty students. Regulation 13.6 provides that Postgraduate/Super-Specialty students shall be required to participate in the teaching/training program of MBBS students and interns who have passed MBBS Course and are undergoing one year of rotating internship in a medical college.

8. Further, the Regulation 13.8(b) provides that the Super Specialty students shall participate in surgical operations while working as Senior Residents/Registrars in the concerned departments. Regulation 14(II) provides for the examination for award of M.Ch Degree, wherein, Regulation 14(II)(b) deals with clinical practical & oral examination. The practical examination consists of carrying out special investigative techniques for diagnosis & therapy and that M.Ch. candidates are also examined on surgical procedures.



9. Further, all the above desired skills and competencies shall only be fulfilled by M.Ch. Students while working as Senior Residents in the concerned departments for a holistic hands on training while treating patients in the attached hospital of the medical College. The nomenclature of Senior Residents, across the country is used interchangeably and denotes a training undergoing Super-Specially course, who is also working in the hospital during the tenure of the course for which he is regularly paid a stipend. The functioning of the M.Ch. students as Senior Residents in the concerned departments is imperative for training of such students and the same cannot be separated from the training. Thus, the petitioner herein while undergoing Super-Specialty M.Ch.Course is working in the hospital/medical college as Senior Resident in the concerned departments and resultantly shall be within the purview of various rules/regulations of the concerned medical college as well as the Post Graduate Medical Education Regulations, 2000. It cannot be understood that the petitioner herein while undergoing Super-Specialty M.Ch. Course can be exclusively dealt with simply as Full-Time Senior Residents in the concerned departments and must necessarily comply with regulations framed by the Regulator for the Post Graduate Medical Education.



10. As per provisions of Post Graduate Medical Education Regulations, 2000, there is no provision of termination from M.Ch. Course by the college without the approval of Regulator. Accordingly, a student/petitioner cannot be terminated under provisions of Staff Service Rules of the College/University.

11. I have perused the entire materials placed on record. In view of the above submissions, now the point arises for consideration in this writ petition is whether the student allotted to the Medical College under the NEET qualifications by the National Medical Commission and expert statutory body will be treated as permanent employee during the period of training?

12. The fact that the petitioner was allotted M.Ch course in the respondent college as per the NEET ranking in a general counselling is not disputed. Though the National Medical Commission Act, 2009 came into effect, the Postgraduate Medical Education Regulations, 2000 is still in vogue as per the second respondent. Regulation 9A makes it very clear that there shall be a common counselling for admission to all Postgraduate Courses (Diploma/MD/MS/DM/M.Ch.) in all Medical Educational



Institutions on the basis of merit list of the National-Eligibility-cum-Entrance

WEB COPY Test.

13. Regulation 10 (2) of the Postgraduate Medical Education Regulations, 2000 reads as follows:

“10.Period of training

...

(2) Doctor of Medicine (D.M.)/Master of Chirurgiae (M.Ch.)

The period of training for obtaining these degrees shall be three completed years (including the examination period) after obtaining M.D./M.S.degrees, or equivalent recognized qualification in the required subject;

...

“Migration

Under no circumstance, Migration/transfer of student undergoing any Post Graduate Degree/Diploma/Super Specialty course shall be permitted by any University/Authority””

Emphasis supplied

Therefore, the above regulation makes it very clear that once the student is allotted to the medical college for the post graduate degree, under no circumstance, Migration or transfer of student shall be permitted by any University or authority. Therefore, it makes it clear that once the student got



admitted under the general counselling as per the Regulation, he shall undergo the period of training as stipulated in Regulation 10.

14. Regulation 11 deals with Departmental training facilities. Regulation 13.2 deals with Training Programme which would read as follows:

“13.2 All candidate joining Post Graduate training programme shall work as full time residents during the period of training, attending not less than 80% (Eighty percent) of the training during each calendar year, and given full time responsibility, assignments and participation in all facets of the educational process”

The above regulation makes it clear that all candidates joining Postgraduate/Super-Speciality Training shall work as Full-Time Residents for the period of training and shall not attend less than 80% of imparted training during academic term of six months including assignment, assessed full time responsibilities and participation in all facets of the educational process.

15. Regulation 13.3 reads as follows:

“13.3 The post-graduate students undergoing post-graduate degree/Diploma/Super Specialty course shall be



paid stipend on par with the stipend being paid to post-graduate students of State Government Medical Institutions/Central Government Medical Institutions, in the State/Union Territory where the institution is located. Similarly, the matter of grant of leave to post-graduate students shall be regulated as per the respective State Government rules.”

The above regulation makes it clear that Postgraduate/Super Specialty students shall be paid stipend as being paid to Postgraduate/Super-Specialty students of the State Government Medical Colleges in the State Union Territory where the said medical college is situated. Therefore, the above makes it clear that as long as during the period of training, i.e., 3 years fixed as per the Regulation to complete the Postgraduate degree. Such student will be called as a trainee or resident doctor and shall be paid stipend compulsorily by the institution.

16. Merely, because the stipend has been paid by the institution and the appointment has been issued by the Principal of the College, such paying of stipend and treating the petitioner in the post of Senior Postgraduate Registrar in the respondent Medical College, it cannot be construed that there is a master and servant relationship come into existence. The very



appointment order dated 08.09.2019 is pursuant to the guidelines of the Regulations governing the Postgraduate students. Therefore, merely on the basis of paying the stipend, the institution cannot contend that the petitioner is an employee of the college. Therefore, the contention that the Service Rules of the College will apply to the doctor cannot be sustained in the eye of law.

17. It is relevant to note that the right to continue the education has been totally taken away under the pretext of some enquiry. It is relevant to note that normally in a departmental proceedings, the Constitutional Court will be slow in reassessing the entire evidences, but, at the same time, when the departmental proceedings has been initiated without jurisdiction and for some or other reasons to see that the student pursuing in the college is sent out, the Court cannot shut its eyes from going into the very enquiry proceedings. It is relevant to note that primarily the following charges were issued against the petitioner and all the charges are only general in nature, there is no specific instances brought out. The charges are as follows:

(i) That you are consistently being late to work despite repeated warning letters issued from the department



(ii) That you regularly absent from the work place during working hours for long period that you were not contactable during absence from work place.

(iii) That you willfully absent yourself from duty without any prior permission or approval from your immediate superior.

(iv) That while on ICU duty you neglected patient who were under your care.

(v) That you are not behaving in a professional manner with patient and using inappropriate language to patients.

(vi) That when the staff on duty in the ward try to contact you with regard to patient issues you are not attending phone calls and they had to contact the “on call” consultation to clarify the issues.

(vii) That you are argumentative and unwilling to accept instructions from senior faculty on many occasions and you have been verbally abusive to some of the senior consultant.

(viii) That your surgical skills and judgment skills are for inferior to what should be expected from an MS General Surgery Post Graduate doctor. On many occasions, the consultant surgeon have tried to help you with techniques and procedures; however it is noted by them that you are unwilling to learn and show no improvement in surgical skills over time



(ix) *That it is reported by KN ward staff that you have been asking inpatients why they got admitted in CMC as you felt that charges were very height.*

18. If really, the petitioner has not attended the classes and there was no attendance, he may be debarred from examinations, since 80% attendance is compulsory as per the Regulations. Therefore, merely on the general allegations, the entire proceedings have been initiated. The so-called enquiry report in this regard when perused, it would indicate that the statement of witnesses have been recorded, in stereotype, in a proof affidavit attested by one advocate. Be that as it may, the charges mainly indicate that since the petitioner appears to have indulged in spreading false information among the inpatients that the institution is charging high rates towards treatment, which is prejudicial to the interest of the college. In this regard, he has been warned many times, therefore, other charges are also slapped against him. The various charges levelled against the petitioner/student and glanced by the Court, the same will make it clear that the respondents are not happy with the petitioner interacting with the inpatient admitted in the hospital. All the management witnesses, evidences taken in the affidavit and the affidavit of some of the witnesses were received at the same time at one stretch. Though



witnesses has been adjourned to some date, the evidence of some of the witnesses against the petitioner indicate that main allegation against the petitioner is that he never come on time, always walking in late, he would disappear often without an explanation even when it was his turn to present the cases during rounds. Later, he would reappear, without any explanation for his absence, other allegations are leaving the place without permission from the place of work. The main allegations are that the petitioner appears to be not respecting other faculties. Be that as it may, the entire Service Rules has been put against the petitioner.

19. Rule 4.16 of the Staff Service Rules, Christian Medical College, Vellore reads as follows:

"4.16 "Trainee" means a person to whom the facilities of the College are extended for training or learning work in a relevant field with or without an allowance of stipend. A Trainee may be charged a fee for the training by the Management. A Trainee is not an employee of the College and has no rights of employment"

From the above Rule, it makes it clear that the trainee is not an employee of the College and no rights of the employment. Such view of the matter, this



Court is of the view that treating the petitioner, who is admittedly student and trainee as a full time employee of the College, initiating departmental proceedings cannot be sustained in the eye of law. As far as the MCI Regulations, in the event, the petitioner is not having 80% of the attendance as required for examinations, he may not be in a position to take out examinations. Further, only in the serious misconduct like ragging or serious offence, the student can be debarred from writing examinations. However, the student cannot be restricted or debarred from writing the examinations for some whims and fancies of the respondent college.

20. The manner in which the entire enquiry commenced, indicate that stereotype affidavits have been received and charges have been framed for flimsy reasons. Further, the so-called committee also appeared to have assessed the petitioner as if he is not fit to be a surgeon. This Court is of the view that such exercise is made only in order to some or other to throw the petitioner away from the institution. It is not the case of the respondents that he has been involved in any ragging or criminal offences to rusticate him from the college. What has to be seen in the case of trainees are their performance and the mandatory attendance for writing examination. The



Regulation 14 deals with Examination and Appendix II deals with guidelines on appointment of Post Graduate Examiners, same stipulates that it has to be done only by the concerned University shall supervise and Co-ordinate the examination on behalf of the University with independent authority. So when the control of examinations is totally with the university; when the person has qualified in attendance and training, he cannot be non-suited merely on the basis of the some vague accusations treating him as a permanent employee of the College.

21. It is the specific stand of the National Medical Commission in their reply affidavit that as per provisions of Post Graduate Medical Education Regulations, 2000, there is no provision of termination from M.Ch Course by the College without the approval of Regulator. Hence, it is the stand of the NMC that student cannot be terminated under provisions of Staff Service Rules of the College/University only.

22. Such view of the matter, in the absence of any criminal offence or ragging which debars the person from continuing the study as per the statutory rules, merely on some bald accusations, the student selected through



NEET, his study cannot be dispensed with and he cannot be terminated.

Further, invoking such Staff Rules of the institution, itself, is not in order.

Accordingly, the entire proceedings in view of this Court cannot be sustained in the eye of law.

23. No doubt, when the petitioner has challenged the charge memo in the earlier writ petition in W.P.No.14596 of 2020, this Court has dismissed the writ petition as a premature. The issue of jurisdiction was never raised in the writ petition. Similarly, the Division Bench of this Court in W.A.No.1976 of 2021 has not gone into the issue whether there is a master and servant relationship and whether a trainee can be dispensed with by the College without approval of the MCI. Writ Appeal has been dismissed on the ground that since in the meanwhile, the enquiry has been completed and the termination order has been passed. The writ appeal was dismissed with a liberty to challenge the termination Order. Therefore, this Court is of the view that merely because the charge memo has not been quashed in the earlier occasion, the same will not validate the disciplinary proceedings initiated invoking the Rules of the College which cannot be applied to the student who is selected in a general counselling of the NEET.



24. It is also urged by the respondent that the Special Committee is also constituted to ascertain the competency of the petitioner to work as a Cardio thoracic surgeon and ultimately, it was concluded by the committee by report dated 16.02.2023 that there is no positive change in the attitude, disposition or other requirements of the petitioner for training in patient care areas. The crux of the Committee report is as follows:

" Soon after Dr. Biravinth was allowed into the board room, another person tried to enter and the committee was surprised. Dr. Biravinth told it was his brother and they both insisted that he needed/ moral support and because of their demeanour and tone, he was allowed in. However, after entering, the person who accompanied mentioned that he was actually not the brother but he was the local representative of a political party and he was asked by the party office in Chennai to represent him. It was evident from the interaction between the two of them that they had not closely known each other earlier but Dr. Biravinth was quick to tell a lie to get his way, this is not the behaviour expected of a medical professional. Integrity in the workplace is of utmost important, but his integrity is still questionable from his behaviour.

On further discussion with him regarding his perception of the stint as super speciality trainee, the



Committee could not identify aspects where he was aware of any deficiencies from his side. He was of the opinion that he was no different from any other trainee. When he was specifically asked what he felt was the possible reason for him going through these situations and whether any course correction is possible, he did not have a satisfactory answer. He was asked what he understood of the word "insight". To the Committee's surprise, in addition to not being aware of the meaning, he came up with his own definition which was completely unrelated and incorrect. This made it obvious to the Committee that he had probably very little insight into the challenges that were encountered with his training. He felt that the complaints listed against him were all very vague and did not warrant dismissal. He said that his mistakes, if any, were accidental and not purposeful. He asked the Committee to define what was permissible as accidental and what was negligence.

As he could not enlist deficiencies in his learning and areas where additional input is required, it was difficult for the Committee to suggest options of graded training to make him a good cardiothoracic surgeon and give him a training that would be safe to patients. As this training involves close interaction with patients with major life-threatening cardiac illnesses, it would be harmful to be under the care of a doctor who is unable to



identify his deficiencies and rectify them through appropriate specific training. The Committee is of the opinion that his lack of courtesy and discipline to inform of his absence despite being aware of the meeting schedule reflects poorly on his attitude and demonstrates a careless approach, though the meeting was mandated by the Hon'ble High Court, Such an attitude and behaviour is extremely dangerous for patient care. Hence, it was concluded that the Committee did not identify any positive change in the attitude, disposition, or other requirements that would make it safe for training in patient care areas.

The above Report itself indicate that the enquiry report is not based on the scientific valuation, the report is biased for the simple reason that he brought third party and he is not courteous and he has not answered the queries properly. This itself indicate that the entire report is attached with the elements of bias against the petitioner. After seeing this report, this Court has also interacted the petitioner, present in the Court in the presence of the Counsel. On his interaction, this Court is of the view that his intellectual level is very high, he has already qualified his Postgraduate degree in M.S (General Surgery) and thereafter pursuing M.Ch. From his further interactions reveal the fact that there are differences of opinion among the



intellectuals. Therefore, though certain revelations also made, this Court is not going into those details, however, this Court is fully satisfied that the petitioner intellectual capacity is very high and this Court is of the view that the respondent has no jurisdiction to initiate disciplinary proceedings and terminate the petitioner from the college.

25. Such view of the matter, as there is no employer and employee relationship merely on the basis of stipend is paid by the college, the same cannot be taken as a salary paid by the college. In fact, it is a mandate as per the regulations referred above to pay the stipend by the concerned college. Such view of the matter, the entire disciplinary proceedings and termination order stand quashed and the respondents shall permit the petitioner to complete the M.Ch. Course. The petitioner has already completed two years course and he has to undergone one more year and the respondent shall permit the petitioner to undergo the training and writing the examinations.

26. Accordingly, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

10.10.2023

dhk



Internet : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Note: Issue Order Copy on 13.10.2023.

To

1.The Principal
Christian Medical College
Vellore – 632 002

2.The Secretary
National Medical Commission
Pocket-14, Sector-8
Dwarka Phase-1
New Delhi – 110 077



WEB COPY



24

N.SATHISH KUMAR, J.

dhk

W.P.No.34942 of 2022

10.10.2023