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W.P.No.35598 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.35598 of 2023 &
WMP.No.35531 of 2023

1. Dr.Raj Kawsik G.A.
2. Dr.Elamathi E.
3. Dr.Fathima Fahima A.

.. Petitioners

Vs

- 1.The State of Tamil Nadu
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
- 2.Directorate of Medical Education,
Represented by the Director of Medical Education,
Kilpauk, Chennai-600 010.
- 3.Directorate of Medical and Rural Health Services
Represented by the Director of Medical Health and
Rural Health Services,
359, Anna Salai, Chennai-600 006.
- 4.Directorate of Public Health and Preventive Medicine
Represented by the Director of Public Health and
Preventive Medicine,
359, Anna Salai, Chennai-600 006.
- 5.Madras Medical College
represented by its Dean
E.V.R.Salai, Chennai – 600 003.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the Respondents to
treat the petitioners' two-year compulsory bond period as



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completed, and to consequently direct the 5th respondent to return the petitioners' original certificates and documents collected by the 5th respondent while admitting the petitioners to the post graduate degree course along with their Post Graduate degree certificate.

For Petitioners : Mr.Suhrith Parthasarathy

For Respondents : Mr.Vadivelu Deenadayalan
Additional Government Pleader

ORDER

This matter is listed today under the caption 'for being mentioned'. After hearing the parties, order dated 21.12.2023 is recalled and orders are passed afresh.

2. WMP No.35529 of 2023 filed seeking permission to file a single Writ Petition is ordered on payment of separate Court fee.

3. Mr.Vadivelu Deenadayalan, learned Additional Government Pleader accepts notice for the respondents and is armed with instructions to enable final disposal of the matter, even at this juncture. Hence, by consent of both learned counsel, the Writ Petition is taken up for final disposal, even at the stage of admission.

4. I have considered an identical prayer as in the present Writ Petition in W.P.No.28238 of 2023 and have held as follows:

"The petitioner is a Doctor, who had completed Post Graduation in General Medicine from KAP Viswanathan Medical College in the



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non service category. He had completed the course in May, 2022 and had, at the time of admission to the course, executed a bond for a sum of Rs.40 lakhs undertaking that he would serve the State for a period of two years after completion of the course. The bond period, admittedly, runs till 31.05.2024.

2. Within a few months of commencing the course, the Covid 19 pandemic had struck and the petitioner, and, in fact several other identically / similarly placed candidates, were required to be on covid duty in R5 Hospital. Though no appointment orders could be issued seeing as the petitioner was a student then, his services during the covid period is not disputed as duty sheets for the service rendered have duly been produced by the petitioner and verified by the respondent counsel.

3. The question as to whether covid duty would constitute in-bond service is no longer res integra having been considered and accepted by two learned Judges in W.P.No.26556 of 2022 (decision dated 02.02.2023) and W.P.No.22894 of 2023 (decision dated 08.09.2023). In these cases, the petitioners were students who were required to perform covid duty during their course and this Court has held, and I concur with these decisions, that the covid duty rendered by the students should be taken note of as service during the bond period.

4. An additional question that arises in this case is as to whether quarantine relatable to covid period is also be taken as bond service. The period of quarantine is, in my considered view, nothing but an extension of covid duty itself as the Rules prevalent then required mandatory quarantine. The petitioner would well have continued with the duty in the covid ward itself has it not been for the mandate of compulsory quarantine. Thus, taking the period of quarantine also as on-duty, such period in this case is quantified as 150 days. On-duty call sheets duly signed by the Dean of R5 college



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have been produced by the petitioner. This will advance the closure of bond period to 02.01.2024 from 31.05.2024.

5. The petitioner's request for a mandamus directing the respondents to treat compulsory bond period as concluding on 02.01.2024 is accepted. R5 is directed, upon completion of bond period on 02.01.2024, to return to the petitioner, his original certificates received at the time of admission to PG course.

6. Allowed in the above terms. No costs. Connected miscellaneous petition is closed."

5. Yet another development has been noted by me in W.P.Nos.32073, 33124, 32505, 32512, 29724 and 32380 of 2023 to following effect:

"The issue of treating Covid duty as period of duty for the purpose of computing of bond service now stands settled categorically by virtue of an order passed by the First Bench in W.P.Nos.25827, 25785 and 27568 of 2023, decided on 16.11.2023.

2. Those Writ Petitions relate to the recruitment of Assistant Surgeons. In the course of the discussion, the First Bench has settled the position that, both for the purpose of Under Graduate (UG) as well as Post Graduate (PG) medical education, the duties performed during covid period/treating covid patients should be treated as eligible duty.

3. The discussion from paragraph 7 onwards is clear to this effect and reads as follows:

7. It is true that the services rendered by the Post-Graduate students is part of their 36 months period training which they undergo. The said period is supposed to be the practical training towards the subject in which they undergo the study. Because of the abnormal situation arising



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out of the COVID - 19 pandemic, they were also roped in COVID - 19 duty in the COVID - 19 wards in the Government Hospitals. It is not in dispute that they put in the same kind of duty and underwent the same rigors as that of the other medical officers recruited by the State Government. As a matter of fact, the persons, who were recruited by the State Government for the said purpose of performing COVID - 19 duty in these wards which are set up as part of the disaster management, are categorised as 'Medical Officers'.

7.1. It may be seen that both these temporary appointees as well as the Post-Graduate medical students are registered medical practitioners eligible to be appointed as Assistant Surgeons. Service to the Health Department, Government of Tamil nadu is governed by the Statutory Rules known as Tamil Nadu Medical Service Rules. It contains two parts namely, Branch-I Medical and Branch-II Nursing. As far as the medical cadre is concerned, as per Rule 2, it is divided into Civil Surgeon cadre and Assistant Surgeon cadre. All the entry level posts of Assistant Surgeon in the general line, Non-Clinical Lectures, Tutors / Assistant Professors, Clinical Lecturers, Senior Residents / Assistant Professors and the Women State Family Planning Officer are all grouped under the cadre of Assistant Surgeon. Thus, it can be seen that there is no such post as such called 'Medical Officer'. But, the term 'Medical Officer' is widely used in the rules to denote every registered medical practitioner appointed to any post. When it comes to deputing personnel for the Chennai City Police, they are called Medical Officers to the Chennai City Police. The Senior Residents are also termed as 'Resident Medical Officers'



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Similarly, the term 'Medical Officer' is generally used in the context of referring to the person who is working in any capacity with the qualified medical degree (in common parlance, the Doctors working in the department).

4. *Thus, the submission of the respondents to the effect that PG students were only been given 'training' and that such service must be disregarded for computation of duty/bond period cannot be accepted. In light of the decision of the First Bench cited supra affirming the principle that the duty performed by PG students during Covid period must be taken as regular medical service.*

5. *The State has now issued G.O.Ms.No.371 dated 18.11.2023 directing that the term 'Medical Officers' mentioned at Para 5.1(i) of G.O.(MS.) No.278, Health and Family Welfare (B1) Department dated 17.08.2023 be replaced as 'Medical Officers including Post Graduate Students'. The authorities have been directed to issue certificates confirming the number of days when covid duty was performed by the students.*

6. *In light of the above, let such certificates be issued to the petitioners at least two days prior to the next date of hearing. List on 05.12.2023. Written instructions/counter, if any, by then with an advance copy to the petitioners."*

6. The petitioners have received covid duty certificates in terms of G.O.Ms.No.371 dated 18.11.2023 and G.O.(MS.) No.278 dated 17.08.2023. The details of the post-graduation courses completed by the petitioners and the number of days of covid duty rendered by the petitioners as per the certificates issued by the respondents, are as follows:



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S.No	PETITIONER S' NAME	PG in :(MAY 2019 TO May 2022)	PG COURSE	DURATION OF COVID-19 DUTY	DATE OF POSTING ORDER	DURATION MENTIONED IN THE POSTING ORDER
1	Dr.Raj Kawsik	Madras Medical College	Ophthalmology	17.08.2020 to 30.04.2022 (1 year, 8 months 14 days)	16.02.2022	One year and six months.
2	Dr.Elamathi E.	Madras Medical College	Ophthalmology	21.05.2020 to 30.04.2022 (1 year, 11 months 10 days)	16.02.2022	One year and six months.
3	Dr.Fathima Fahima A	Madras Medical College	Ophthalmology	06.06.2020 to 30.04.2022 (1 year, 10 months 25 days)	16.02.2022	One year and six months.

7. Both Mr.Vadivelu, who appears for the respondents today and Mr.J.C.Durairaj, learned Additional Government Pleader who had appeared earlier for the respondents would categorically confirm that the particulars as set out in the tabulation above have been verified with the authorities to be correct and representing the proper sequence of events.

8. In the present case, one difference in fact is that the duration mentioned in the posting order is itself for a period less than two years bearing in mind the fact that orders have been issued belatedly.

9. The petitioners had completed their courses in May, 2022 and as per the decision of the First Bench of this Court in *State of Tamil Nadu vs P.S.Sairam and others* (2020) 7 Madas LJ 513, the posting orders are to run co-terminus with the period of successful



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completion of course of the candidate. It is for this reason that duration in the posting order is itself only for a period of one year and six months in all three cases. As against the same, the petitioner have admittedly rendered services covid duty for a period of 1 year 8 months and 13 days, 1 year 11 months and 10 days &and 1 year 10 months 25 days which is in excess of the duration mentioned in the regular posting order.

10. The petitioners are hence released from bonded Government service and there is a direction to the Dean of Madras Medical college to return their original certificates when the petitioners presents themselves before them, forthwith.

11. The Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

05.01.2024

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

- 1.The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
- 2.The Director of Medical Education,
.Directorate of Medical Education,
Kilpauk, Chennai-600 010.
- 3.Directorate of Medical and Rural Health Services
Represented by the Director of Medical Health and
Rural Health Services,



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359, Anna Salai, Chennai-600 006.

4.The Director of Public Health and Preventive Medicine,
Directorate of Public Health and Preventive Medicine
359, Anna Salai, Chennai-600 006.

5.The Dean
Madras Medical College
E.V.R.Salai, Chennai – 600 003.



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DR. ANITA SUMANTH,J.

ssm

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