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W.P.No.436 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.436 of 2023

Dr.Stacy Ann Marbaniang

... Petitioner

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
Rep. by the Director of Medical Education
Kilpauk, Chennai - 600 010.

3.Stanley Medical College
Represented by its Dean
1, Old Jail Road
George Town, Chennai - 600 001.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to return the original certificates of the petitioner collected by the third respondent at the time of her admission and to provide her original Post Graduate Certificate.

For Petitioner : Mr.E.Manoharan

For Respondents : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.M.Bindran
Additional Government Pleader [R1 to R3]



ORDER

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1. This is an unfortunate case wherein the petitioner, a qualified doctor, who had completed her post graduate degree course with the 3rd respondent institution, is still denied the return of her original certificates submitted to the institution at the time of her admission in 2017. The petitioner, Dr.Stacy Ann Marbaniang had joined post-graduate degree course at the 3rd respondent institution as a non-service candidate during the academic year of 2017-2018. At the time of admission, she was made to sign a bond in which she had agreed to serve the Government of Tamil Nadu for a period not less than two years, and if she failed in her promise and breached the terms of the bond, she would pay the Government a sum of Rs. 40,00,000/-.

2. The petitioner completed her course in May 2020, and the two year period which the petitioner had undertaken to serve in terms of the bond that she had executed, began in June 2020. However, from June 2020 till May 2022, during the entire two-year period stipulated in the bond, she was not issued an order of appointment to serve in the Government hospital. Despite the same, the third respondent institution has been unwaveringly denying the return of the original certificates of the petitioner submitted at the time of her admission in 2017, thus successfully impeding the petitioner from undertaking such pursuits that her



noble qualification offers. Hence, the petition.

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3. Heard Mr.E.Manoharan, learned counsel for the petitioner and Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.M.Bindran, Additional Government Pleader for the respondents.

4. Reiterating the facts as stated above, the learned counsel for the petitioner submitted that most of the bond period fell during the COVID days, and the petitioner was not issued an appointment order to enable her to fulfill her commitment under the bond. It however, needs to be admitted, argued the counsel, that on 26.12.2020, the petitioner received a posting order for a temporary posting to serve during COVID, but she could not report for more than one reason: the petitioner hails from Meghalaya and was also working in the Government hospital in Meghalaya in terms of the bond that she executed with that Government at the time of pursuing her MBBS degree; the other reason relates to travel restrictions imposed during COVID times. As per the dictum of a Division Bench of this Court in *State of Tamil Nadu & Others Vs P.S. Sairam* [2020 7 MLJ 513], the contractual obligation of the petitioner would expire with the expiry of the two year period from the date on which the candidate successfully completes the course. The candidates who have not been



offered appointment within the period of two years would be entitled to receive their certificates from the academic institution. In this case, the bond period having terminated in May 2022, and the petitioner not having been issued a regular bond posting within the said period, the 3rd respondent institution cannot hold back her original certificates any further.

5. Countering the arguments of the petitioner, the learned Additional Advocate General submitted that while the posting offered to the petitioner during December, 2020 was only a temporary posting, the petitioner indeed was invited for an online counselling for granting her a posting in terms of the bond on 05.07.2021 and 06.07.2021, through e-mail to all the Deans on 28.06.2021 and also through a notification put up on the department website, viz. *tnhealth.tn.gov.in*. However, the petitioner failed to attend the online counselling. Therefore, the petitioner was singularly responsible for creating a circumstance upon her and she cannot shift the blame on the respondents.

6. Replying to the submissions of the learned Additional Advocate General, the counsel for the petitioner submitted that the petitioner did not receive any communication about the proposed online counselling as contended by the respondents. Even if the petitioner had not participated in the online counselling, still nothing prevented the respondents from issuing an order of appointment.



The respondents' claim in this regard is an attempted cover-up to hide their fault besides an effort to outmanoeuvre the dictum in ***P.S.Sairam Case*** [2020 7 MLJ 513].

7. This Court gave its careful consideration to the rival submissions made. There are two aspects to the submissions of the counsel for the petitioner. The first relates to the allegation and counter allegation regarding the petitioner's failure to appear for counselling that took place on 05.07.2021 and 06.07.2021. What if the petitioner had not appeared for counselling? This takes this Court to the second aspect. Irrespective of whether the petitioner had participated in the online counselling, was there a bar or restriction on the 2nd respondent to issue an order of appointment to the petitioner? The respondents ought to know that participating in the counselling only gives the participant an advantage vis-a-vis the choice of place or posting to which an appointment might be given. If someone does not participate in the counselling, it only means that such candidate will lose an opportunity to convey his/her preference. This necessarily implies that the petitioner could have been served with an appointment order mandating her to serve her bond duty irrespective of her participation in the online counselling. Admittedly it was not given, and in terms of the ratio in ***P.S.Sairam case***, the clock has started ticking in June, 2020 and stopped in May,



2022. Since the second respondent failed to issue an order directing the petitioner to serve her bond duty within the said period, it can neither demand the petitioner to pay Rs. 40,00,000/- nor can it direct the 3rd respondent to retain the original certificates of the petitioner parted with at the time of her admission in 2017.

8. Further, during the course of hearing, it was also brought to light by the counsel for the petitioner that the regular bond posting allotted to the post-graduates is not commensurate with their degree of specialization and experience. These doctors are very often posted in Primary Health Care Centres which only require the services of an undergraduate student or a doctor with M.B.B.S. degree. Doctors with post graduate degrees have spent considerable time, energy and efforts in gaining a certain level of expertise in their field of specialization and to appoint them in PHC would necessarily amount to underutilization of their talent. In this regard, reference is made to the decision of the Bombay High Court in the case of *Vinod Shankarlal Sharma and Ors Vs State of Maharashtra and Anr* [2012 SCC OnLine Bom 1689], wherein the Court has held that appointment of doctors who have completed post-graduation or super-speciality in the Health Care Centres which do not require that level of specialization (merely to fulfill their bond conditions) is violative of Article 14 of the Constitution.



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9. In the light of the above discussion, the respondents have no choice but to return the original certificates of the petitioner in the custody of the 3rd respondent without staking a claim for the bond amount of Rs. 40,00,000/-.

10. In conclusion, this petition is allowed, and the third respondent is now directed to return the original certificates of the petitioner collected by them at the time of her admission to the post graduate degree course, and also her post graduate degree certificate and mark sheets, as prayed for, within a period of two weeks from the date of receipt of a copy of this order. No costs.

12.03.2024

Index : Yes / No
Speaking order / Non-speaking order
ds

N.SESHASAYEE.J.,

ds

To:

1.The Principal Secretary



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Health and Family Welfare Department
Secretariat, Chennai - 600 009.

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