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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.4628 of 2024

Dr.S.Fazil Hussain

... Petitioner

VS

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 2.The Directorate of Public Health and Preventive Medicine,
Anna Salai, Teynampet, Chennai – 600 086.
- 3.The Director of Medical and Rural Health Services,
Anna Salai, Chennai -
4. Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
- 5.Madras Medical College
E.V.R.Salai, Chennai – 600 003.
- 6.Kalaighnar Centenary Super Speciality Hospital,
Guindy, Chennai.

.... Respondents



PRAYER: 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 completed, and to consequently permit the petitioner to relieve from service and to return all original certificates of the petitioner that were submitted by him to the 5th respondent at the time of his admission to Post Graduate Higher Speciality Degree Course.

For Petitioner : Mr.C.Vidhusan

For Respondents : Mr.G.Ameedius
Government Advocate

ORDER

Mr.G.Ameedius, learned Government Advocate 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, this Writ Petition is taken up for final disposal, even at the stage of admission.

2. 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 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.



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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 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.

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

3. 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 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*



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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. 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.

4. The petitioner had 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 course completed by the petitioner and the number of days of covid duty rendered by the petitioner as per the certificates issued by the respondents, are as follows:

PETITIONER'S NAME	PG SUPER SPECIALITY COURSE DETAILS	COURSE DURATION	DURATION OF COVID-19 DUTY	DATE OF POSTING ORDER	DURATION MENTIONED IN THE POSTIN ORDER	JOINING DATE
Dr.S.Fazil Hussain	Madras Medical College DM Cardiology	September 2020 to September 2022	01.04.2020 to 31.05.2021 (1 year and 2	05.06.2023 Kalaighnar Centenary	1 year and 3 months	09.08.2023 No. of days served after joining – 195



PETITIONER'S NAME	PG SUPER SPECIALITY COURSE DETAILS	COURSE DURATION	DURATION OF COVID-19 DUTY	DATE OF POSTING ORDER	DURATION MENTIONED IN THE POSTIN ORDER	JOINING DATE
			months) 426 days)	Super Speciality Hospital, Guindy	Delay 212 days	days

5. Mr.G.Ameedius, learned Government Advocate 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.

6. The petitioner had completed his super speciality course in September, 2022. He has rendered covid duty for a period of one year and two months. That apart, regular posting order has been issued only on 05.06.2023 belatedly with a delay of nine months. Thus, in light of the decision of the First Bench of this Court in *State of Tamil Nadu vs P.S.Sairam and others* (2020) 7 Madras LJ 513 to the effect that posting orders are to run co-terminus with the period of successful completion of course of the candidate, the petitioner is entitled to the benefit of the intervening period of nine months.

7. Hence, the services rendered by the petitioner, i.e., 426 days + 195 days + 212 days = 833 days, being in excess of two years, he satisfies the conditions required under the bond.



8. Hence, the petitioner is released from bonded Government service and there is a direction to the 5th respondent to return his original certificates when the petitioner presents himself before them, forthwith.

9. This Writ Petition is disposed in the aforesaid terms. No costs.

23.02.2024

Index : Yes/No

Speaking Order:Yes

Neutral Citation:Yes

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To

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