



W.P.No.9260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.9260 of 2024

Dr.Thotup Gyatso Bhutia

... 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 and Research,
Represented by the Director of Medical Education
and Research,
Kilpauk, Chennai – 600 010.
- 3.Directorate of Public Health and Preventive Medicine,
Represented by the Director of Public Health and
Preventive Medicine,
359, Anna Salai, Chennai – 600 006.
- 4.Tamil Nadu Medical Services Corporation Limited,
Represented by its Chairman,
No.417, Pantheon Road, Egmore,
Chennai – 600 008.
- 5.Government Madras Medical College,
Represented by its Dean,
Chennai.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondent No.5 to issue Covid Duty Certificate in line with G.O.(Ms).No371, dated 18.11.2023 towards the Covid Duty Period rendered for a period of two years six months by the petitioner and also to direct the respondent No.1 to 5 to treat the petitioner's two-year compulsory bond period as completed in line with the service rendered during the Covid-19 period and to direct the 1st and 5th respondent to return the petitioner's original certificates and documents collected by the 1st and 5th respondent while admitting the petitioner to the Post Graduate degree course along with his Post Graduate degree certificate.

For Petitioner : Mr.M.G.Pranavacharan

For Respondents : Mr.K.Tippu Sulthan
Government Advocate

ORDER

The proceedings of the Director of Public Health and Preventive Medicine appointing the petitioner as Assistant Surgeon (Specialists) based on the bond agreement under Rule 19(1) of the Tamil Government Servants (Conditions of Services) Act, 2016 are under challenge in the present writ petitions.

FACTS IN BRIEF:

2. It is not in dispute that the petitioner signed the Bond by accepting the conditions to serve two years of period in the Government



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Hospital. In compliance with the terms of agreement, an appointment order was issued by the respondents to the petitioner. Bond has been executed by the Government taking into consideration the amounts spent for these Post Graduate Medical Course Students to undergo the course. In order to compensate the Government expenditures and with an object to provide free specialised medical treatments to the poor and the needy people across the State of Tamil Nadu, the condition was proposed at the time of admission to Post Graduate Medical course and the condition was accepted by the students / petitioner and they have signed and promised to serve two years of period in Government Hospital after completion of their Post Graduate / Speciality Medical Course.

3. On completion of the course, the petitioner claims that he has served during COVID-19 Pandemic period and the said period is to be reckoned for the purpose of calculating two years of service. The petitioner has further said that the contemplation of two years of period of service itself is untenable. Such conditions imposed in the Bond is not binding on them and therefore, the same is to be set aside.



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4. Mr.M.G.Pranavacharan, learned Counsel appearing on behalf of the petitioner would submit that similar claim of other persons were considered by this Court in some writ petitions. Further, the petitioner has served during Covid-19 pandemic period, which is not disputed. Therefore, the said period is to be reckoned for calculating the total period of two years of service to be rendered as per the bond conditions.

REPLY BY THE RESPONDENTS:

5. Mr.K.Tippu Sulthan, learned Government Advocate appearing on behalf of the respondents would oppose by stating that the Government has not conceded its stand at any point of time. Covid-19 pandemic is an emergency situation and the Post Graduate students are bound to attend patients even while undergoing the Post Graduate Medical course. It is a part of their duty and the Government is paying monthly stipend to all the Post Graduate students. Therefore, the claim of the petitioner is untenable.

6. Considering the claim of many such students, the Government itself has reduced the period from two years to one year in G.O.(Ms)No.351



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dated 27.10.2023. Therefore, the petitioner has to complete one year of service in any Government Medical College and Hospital in compliance with the bond conditions.

7. Pertinently, the expenditure incurred by the Government for training one Post Graduate student (Broad Specialty Course) reads as under:

<i>S. No</i>	<i>Posts</i>	<i>No of Posts required</i>	<i>Minimum Salary per head</i>	<i>Expenditure per month</i>	<i>Total expenditure for 3 years in Rs.</i>
1.	Associate Professor	1	1,00,000	1,00,000	36,00,000
2.	Assistant Professor	3	60,000	1,80,000	64,80,000
3.	PG Salary/Stipend	5(50% will be service PG out of 10 seats eligible in the specialties of Medicine Surgery)	40,000	2,00,000	72,00,000
4.	Stipend	5 (for non service PG)	20,000	1,00,000	36,00,000
5.	Department Library				10,00,000
6.	Research Lab				10,00,000
Total					2,08,00,000 (rounded to Rs.2,10,00,000)

8. Fee payable in Government institutions reads as under:



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<i>Tuition Fees per annum</i>	
Name of the Course	Fees fixed in Rs.
PG Diploma	20,000/-
PG Degree	30,000/-

<i>Particulars</i>	<i>2023-2024 Self Financing Colleges</i>					
Student Strength	Clinical			Non-clinical		
	Govt Quota	Management Quota	NRI	Govt Quota	Management Quota	NRI
Tuition fees	350000	1550000	2600000	300000	435000	1750000
Development fees	35000	35000	35000	35000	35000	35000
Total	385000	1585000	2635000	335000	470000	1785000

The fee structure will vary to fees fixed by Government for poor and meritorious students.

For private Medical College students only the FEE FIXATION COMMITTEE will fix the fees.

3. *Stipend being given during CRR period in MBBS and stipend being paid for PG graduates as well as super Specialty students during the course.*

As per the G.O.(Ms.)No.335 issued by the Health and Family Welfare (MCA) Department dated 29.07.2021 the stipend being given during CRR period in MBBS and Stipend being paid for PG graduates as well as super Specialty students during the course is tabulate below as follows:



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S.No	Student Categories	Year of study	Enhancement of monthly stipend granted (Rs)
1.	CRRI		25,000
2.	Post Graduate	1 st year 2 nd year 3 rd year	48,000 49,000 50,000
3.	Post Graduate Diploma	1 st year 2 nd year	45,000 47,500
4.	Higher Specialty Course	1 st year 2 nd year 3 rd year	50,000 52,500 55,000

The Government also direct an automatic increase of 3% of Stipend in every year.

12.every Department in the Government Medical College requires the following the following doctors, besides other staff and infrastructural facilities.

For example, Madras Medical College, Chennai requires, the following teaching faculty for 37 seats in General Medicine Department:-

Sl.No.	Name of the post	No.of post	Approximate Total Annual pay	
1.	Professor	8	Rs.	18305760
2.	Associate Professor	14	Rs.	24136728
3.	Assistant Professor	28	Rs.	44462544
4.	Senior Resident	4	Rs.	6254208
		Total	Rs.	93159240

9. It is natural that the Government desires to ensure that these



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Doctors, who have underdone Post Graduate training at a very low cost by utilizing the poor people, to serve the poor and the needy of our great nation at large and the State of Tamil Nadu in particular. The public have the right to expect the Specialists to utilize their service during their training for the benefit of the sick, poor and the need. To ensure that the services of trained Post Graduate Doctors are made available to the poor and the needy patients, a bond signed by the candidates with three sureties is obtained from the candidates at the time of their admission. The candidates are a well qualified registered medical practitioner with adequate knowledge and only after carefully reading the bond and understanding it and after being fully aware of the terms and conditions of the bond have signed and they have not been forced to sign the bond.

10. It is believed that such an attitude of the Doctors if allowed, will encourage the attitude of not paying attention to those poor people at whose expense they have been educated, which is opposed to public interest and unacceptable. In spite of executing the bond, many of the candidates after completing their course, neither worked in Government Institutions nor paid the bond amount but in some cases, after few days of work. The very purpose



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of the Government Order is defeated by the candidates, who violate the bond conditions resulting in considerable shortage of Doctors in Government Medical Institutions across the State of Tamil Nadu, thereby depriving treatment to the poor patients, who all are taking treatment in Government Hospitals at free of cost.

11. The National Medical Commission (erstwhile Medical Council of India Post Graduate Medical Education Regulation, 2000) has stipulated the following conditions with reference to the training programme of Post Graduate students.

Clause 13.2

“All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty Percent) of the imparted training during each academic year including assignments, assessed full time responsibilities and participation in all facets of the educational process.”

NMC Norms clearly indicate that patient care during the study period is part of their post graduate training programme.”

17.service rendered by the petitioners during the post graduate study period, is considered as training period as per NMC



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norms. The petitioners are required to attend patients to gain practical knowledge. Since patient care is part of the post graduate training programme, the petitioners were assigned duty of treating and controlling the spread of COVID, including managing Pregnant Mothers who were affected by COVID during their study.

18. The petitioner during their PG period have done COVID duty outside their concerned Specialty during their period of study. Apart from their routine PG curriculum the Post Graduates were allotted COVID duty in turns as per the needs of the institution where they were studying. ...COVID duty is nothing but patient care, which was a National Emergency and the same is a part of the PG training programme as stipulated in the (Erstwhile Medical Council of India, Post Graduate Medical Education Regulation, 2000) and as such, the same cannot be equated to service being rendered by candidates after completing the course. The period of COVID duty done by the Medical Officers after the completions of their PG courses alone will be treated as Bond Service and the service rendered by the Post Graduates during the PG courses can be considered as study period only. Hence, the request of the petitioners to consider their COVID duty done by them during the study period cannot be accepted.”

12. However, the earlier orders of this Court relied on by the petitioner, the above facts and the principles were not considered. Therefore, the said order cannot be followed as a precedent for the purpose of deciding



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these cases. The legal precedent is to be considered with reference to the facts in particular and in the absence of consideration of legal principles, though facts are similar, cannot be construed as precedent. The Government has no justifiable reasons to reduce the Bond period of two years after executing the Bond.

COURT'S VIEW:

13. The prime object of medical profession is to render service to humanity. Doctors cannot adopt a pick and choose attitude while treating patients. Especially poor patients receiving treatment from government run hospitals are entitled to receive the same level of specialised treatment as any other paid treatment. Denial of treatment to poor patients in government hospitals inspite of agreeing to the same under the bond goes against the ethos of medical ethics. It is not the case were the doctors are forced to treat patients for free throughout their career. The bond is such that it operates only for a particular period of time. And the petitioner Doctors are well aware of the terms in the bond and with full agreement to the same had agreed to abide by the terms in the bond. It is nothing but a service to humanity and to



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the poor sections of the society who due to financial constraints are unable to get paid treatment. Such limited services sought for from the petitioner doctors cannot be denied. It is not the case were the doctors are prevented from practising their profession but they have agreed to render their specialised services for a limited period to the less fortunate strata of the society.

14. Saving of lives is unparalleled to none. Government Hospitals today are in need of specialised Doctors. Specialised treatments today have become an expensive affair. Economically weaker sections of the society cannot be denied their fundamental right to health under Art 21 of the Constitution merely on the grounds of financial constraints. It is no fault of his/her that they are unable to afford specialised treatments today. So the Bond scheme is an all conducive scheme whereby various layers of difficulties are addressed. Firstly, the Government pools in enormous financial resources on each and every student studying in a super speciality course. In order to ensure that the right of access to higher education is not denied to any section of the society, the government has formulated this Bond policy whereby, the government will bear the expenditure of the super



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specialised courses provided in government colleges and in return the students shall serve in government run hospitals for a period of 2 years and during this period the students are entitled to a monthly stipend.

15. Secondly, the government run hospitals and other health care centres today are in need of more specialised doctors. Though there are many super speciality hospitals across the country not everyone is capable of affording the treatment at these hospitals. So the persons who will be most benefited from schemes like this will be the poorer sections of the society. They get an equal access to specialised medical treatment like any other financially stable citizen. So by gaining the services of the speciality doctors under the bond scheme the government hospitals across the State get an opportunity to provide affordable super speciality treatment to the economically vulnerable sections of the society.

16. So instead of paying for the education, the PG doctors are asked to render their valuable services in government hospitals for a monthly stipend. The PG Doctors are only further benefited as they are providing their services and are also receiving the valuable experiences by treating patients



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who come in with different complaints.

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17. Thirdly, it goes without saying that the medical profession is a noble one. This Court is not suggesting that all medical services must be rendered free of cost to the citizens though the goal of any welfare state is to move towards affordable and easily accessible health care to all its citizens. Therefore the government is in need of qualified speciality doctors who can treat patients coming to government hospitals with quality and affordable healthcare. Hence the PG doctors after fully agreeing to the terms in the bond had agreed to render their services and it is only in true spirit of the medical profession that their valuable services are rendered for these people who have come to the government hospitals in search of specialised treatments. This is in fact the greatest form of service to the humanity and is a testament of a true Doctor.

17. (a) The Hon'ble Supreme Court of India tested the validity of the Bond conditions and considered the competency of the State to impose such service conditions in the Bond in the case of *Association of Medical Superspeciality Aspirants and Residents and Others vs. Union of India and*



Others reported in (2019) 8 SCC 607, the Apex Court held as follows:

“17. Schedule VII List I Entry 66 to the Constitution refers to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Schedule VII List III Entry 25 deals with education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Legislations can be made by the State Legislature relating to medical education subject to the legislation made by Parliament. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject-matter of compulsory bonds. Therefore, the States are free to legislate on the subject-matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State



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Legislature has the power to legislate. The notifications issued by the State Governments imposing a condition of execution of compulsory bonds at the time of admission to postgraduate courses and superspeciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory employment is not covered by any Central legislation. Therefore, the submissions made on behalf of the appellants that the States lacked competence to issue the notifications as the field is occupied are rejected.

26. Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities [State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83 : 1997 SCC (L&S) 294] . The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21



cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights [Francis Coralie Mullin v. State (UT of Delhi), (1981) 1 SCC 608 : 1981 SCC (Cri) 212].

29. *Dr A.K. Sikri, J. in K.S. Puttaswamy (Aadhaar-5J.) v. Union of India [K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1] observed that the realisation of intrinsic worth of every human being as a member of society is an indispensable condition, and has been recognised as an important human right. Truly speaking, this*



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is directed towards the deprived, downtrodden and the have-nots. He further held that the humanistic concept of human dignity which is to be accorded to that particular segment of the society has to be kept in mind. Their human dignity is based on the socio-economic rights that are read into the fundamental rights. The importance of the communitarian approach along with the individualistic approach to human dignity was addressed by Dr A.K. Sikri, J. in the above judgment [K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1] . The learned Judge emphasised on the role of the State and community in establishing collective goals and restrictions on individual freedoms and rights on behalf of a certain idea of the good life.”

18. The argument that the Petitioner doctors rendered their services during the COVID-19 period and that it must counted in as the two years period under the Bond policy is unsustainable. It is true that doctors across the country rendered invaluable services across the country. But it is to be recognised and appreciated that individuals from across different wings of the Government came out and risked their lives to protect their fellow



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citizens and performed their duties including the frontline workers, Police officials, Revenue officials, public transportation workers, ambulance drivers, Nurses, sanitation workers, NGOs, members of the Press and Media, food and grocery delivery persons and many other good spirited private individuals who volunteered their services in public interest and in the need of the hour. These services are incomparable. It was a period where the country witnessed immense crisis. It was a period of test to the humanity. And many people suffered innumerable losses. But to use this period of selfless service as a way out of the bond policy is utterly unjustifiable and unacceptable. It was a time when people from different walks of lives contributed their services in their own way and the frontline workers like aforementioned risked their lives in the process.

19. Our Great Nation values human resources as an important facet to the economy. More so than ever human resources play a vital role in the Nation building process. People from rural villages contribute a larger portion in this process. And it is the duty of any welfare state to protect the health and cater to the needs of these people. Bond policies play an important role in ensuring affordable specialised healthcare to these individuals from



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the rural backgrounds. Hence through these bond policies the government will be able to seep in to the most vulnerable contributors of the economy and be able to provide quality health care services.

20. This Court is witnessing a pattern in cases as such whereby the students initially agree and sign the bond and after completing their PG education there is a common tendency to retract and approach the Court challenging the bond. The services of a doctor is far different from any other service. Saving one life is a contribution not only to the patient but his family, his dependants and even the economy of a country. It is a service to the Nation. Any poor person who is unable to afford paid treatment can in no way be treated differently. A life is a life and it has its value. No person should be denied quality treatment on economic grounds.

CONCLUSION:

21. In view of the fact that the petitioner has admittedly signed the bond and accepted the terms and conditions stipulated therein, he is not entitled to claim any concession for further reduction of period stipulated



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under the bond conditions. Therefore, the petitioner has to serve in Government Medical College and Hospitals as per the appointment order in compliance with the conditions and after completion of the period stipulated, appropriate decision may be taken by the respondents.

22. Accordingly, the Writ Petition stands **dismissed** at the admission stage itself. No costs.

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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes / No

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