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W.P.No.13855 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.05.2024

CORAM :

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.13855 of 2024

1.Dr.Abhijit N.Markande
2.Dr.Nishanth Gopal

... Petitioners

VS

- 1.The State of Tamil Nadu,
represented by its the Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.
- 2.The Directorate of Medical Education,
represented by the Director of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.The 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.The Directorate of Public Health and
Preventive Medicine,
represented by the Director of Public Health and
Preventive Medicine,
359, Anna Salai,
Chennai – 600 006.



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5.Kalaingar Centenary Super Specialty Hospital,
represented by its Superintendent,
Alandur Road, Guindy,
Chennai – 600 032.

6.Madras Medical Collge,
represented by its Dean,
E.V.R.Salai, Chennai – 600 003.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to treat the petitioners compulsory bond period as completed and to consequently direct the respondent nos.2 to 5 to relieve the petitioners from the bonded service and direct the 6th respondent to return the petitioners original certificates and documents along with the Post-Graduate and super speciality degree certificates, within a time limit.

For the Petitioners : Mr.Suhrith Parthasarathy

For the Respondents : Mr.E.Sundaram
Government Advocate

ORDER

Heard both sides.

2.The petitioners herein successfully completed their Post Graduate and Super Speciality Course in the 6th respondent college



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since 2024. When the petitioners joined the course, they were non service candidates. The petitioners had executed a bond undertaking to serve the Government of Tamil Nadu for a period of two years after completing the course. This bond period had subsequently been reduced to one year.

3. The petitioners claim to have done the Covid Duty for one year and they have been serving the bond period since February 2024. The question is whether the petitioners should be called upon to undergo the balance bond period of service.

4.The learned counsel appearing for the petitioner points out that as a student, the petitioners had rendered what is called as "Covid duty". The contention of the learned counsel appearing for the petitioners is that this should be treated as bond service. Since the petitioners' request was not considered, the present writ petition came to be filed.

5.The issue raised in this writ petition is no longer *res integra*. Copy of the order dated 07.12.2023 made in W.P.No.33228 of 2023



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etc (Dr.S.Kiran Kumar & Others Vs The State of Tamil Nadu & Others) has been enclosed in the typed set of papers. Yet another order dated 02.02.2023 in W.P.No.26556 of 2022 (Dr.Jayakrishnan M.P & Others Vs The State of Tamil Nadu & Others) has also been enclosed. Para 12 to 19 of the said order read as follows:

"12. The only aspect is that the petitioners were unfortunately studying Super Specialty Courses at that particular point of time. The core issue is thus the voluntary offering of medical service to treat covid-19 patients. Voluntarily offering themselves to treat covid-19 patients could be by Post Graduates and incidentally also by those who are studying Super Specialty Courses after completing their Post Graduates course. The petitioners were studying Super Specialty Courses and I hold that the said fact should not be held against them. If they had avoided giving treatment to Covid 19 patients on the ground that they are studying Super Specialty Courses then, the petitioners could be found fault with. But they had also undergone the same risk and had treated the patients. The concept of adjustment of that service rendered during covid-19 is to also appreciated. The risk which the medical professionals had put



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themselves while treating the patients during the first phase of covid-19 when vaccinations had not been discovered put every front line worker at risk. Many of suffered that risk.

13. Viewed from the angle of rendering of medical service either as students of Super Specialty courses as professionals, who had completed Post Graduation and not studying doing Super Specialty Courses, I hold that the risk which the petitioners had undergone has to be equated with the risk of every other medical professional.

14. The core element is purely offering services. If it had been so offered, then that fact should be appreciated. The only manner in which that could be appreciated is to adjust that particular service with the two years bond period is the argument.

15. I hold that the petitioners herein would be reasonably justified if they were to opine that they stood discriminated when compared with those Post Graduate, medical professionals, who were not studying Super Specialty Courses merely because they were students doing Super Specialty Courses.



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16. Every medical professional would appreciate the service at that critical period. Appreciation should be extended not only to those, who had completed the course but also to those who were studying in Super Specialty Courses. A student, who is studying in Super Specialty Courses had also exposed, would himself or herself to the infection. Taken into consideration the specialised courses which they were undergoing and the stage of their career, they could have easily avoided that duty and sought protection on the ground that they were students. The petitioners did not avoid the call for duty.

17. I hold that the Government has to extend arm to them and adjust that particular service rendered towards the two years of bond service which they had to undergo. There is no refusal on their part to undergo the two years period but they only expect to seek adjustment of the period already spent while treating covid-19 patients.

18. I hold that the refusal by the respondents cannot withstand judicial scrutiny. It would also be discretionary as against the petitioners herein when they are compared with other medical professionals, who had actually completed their Post Graduate study



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study as the petitioners.

19. I would therefore give a direction to the respondents to accommodate adjusting the period already completed with the bond period and return their educational certificates within a period of three weeks from the date of receipt of a copy of this order."

When I was about to allow the writ petition by citing these two orders, the learned Government Advocate informed me that a learned Judge of this Court vide order dated 22.04.2024 in W.P.No.10799 of 2024 which also involved identical set of facts declined to grant relief.

6.In fact, the petitioners' counsel was fair enough to submit even at the very outset that except this solitary order, all the other orders which would run to scores are on the same lines as that of the order dated 02.02.2023 in W.P.No.26556 of 2022.

7.The learned counsel appearing for the petitioners would submit that the Hon'ble First Bench of this Court vide order dated 16.11.2023 in W.P.No.25827 of 2023 (Dr.D.Hariharan & Others Vs The Union of



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India & Others) had taken the view that Covid duty should be considered as bond service. Paragraph 7.3 of the said order reads as follows:

"7.3. We are also considering one more aspect in granting such an interpretation i.e., the number of patients treated by these Post-Graduate medical students and the amount of duty they have put in all these Government wards is no less when compared to the temporary Medical Officers who have been recruited. As a matter of fact, the Post-Graduate medical students did not even have an option. As rightly contended by Mr.Suhrith Parthasarathy, the learned Counsel, the duties rendered by them have been held to be equivalent to that of the regular Medical Officers in the earlier ruling of this Court in W.P.No.26556 of 2022 etc. Thus, when the term "Medical Officer" is not expressly defined in the special rules and when both the rules and the Government Order use the said phrase in a common manner across cadres to mean 'Doctors', we hold that the same would also mean the Post-Graduate students in Government Hospitals in the content of grant of incentive marks for the selfless service rendered by them in COVID – 19 wards putting



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themselves and their lives to risk."

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The overwhelming weight of authority in the light of the order passed by the Hon'ble First Bench impels me to answer the issue raised in the writ petition in favour of the petitioners. It is declared that the Covid duty performed by the petitioners shall be treated as bond service. It is stated that the petitioners' original certificates are with the 6th respondent.

8.I have been consistently holding that one's educational certificates cannot be retained for any reason as no lien can be claimed thereon. Educational certificates are not marketable commodities within the meaning of Section 171 of the Indian Contract Act, 1872.

9.The 6th respondent is directed to return the petitioners' original certificates forthwith and without delay. The second respondent is directed to formally relieve the petitioners from the bonded service. This shall be done within a period of four weeks from the date of receipt of a copy of this order.



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10.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, W.M.P.No.15023 of 2024 is closed. W.M.P.No.15022 of 2024 filed to permit the petitioners to file a single writ petition is ordered, inasmuch as the petitioners have paid separate court fee.

24.05.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

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State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai – 600 009.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.The Director of Medical Health and Rural Health Services,
Directorate of Medical and Rural Health Services,
359, Anna Salai,
Chennai – 600 006.
- 4.The Director of Public Health and Preventive Medicine,
Directorate of Public Health and Preventive Medicine,



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5.The Dean,
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6.The Dean,
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G.R.SWAMINATHAN, J.

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