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W.P.No.14254 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.14254 of 2024

Dr.Nunavath Santhosh

.. Petitioner

VS

1.The State of Tamil Nadu

Rep. By the Principal Secretary,
Health & Family Welfare Department,
Fort St.George, Chennai – 600 009.

2.Directorate of Medical Education,

Rep. By its Director of Medical Education,
Kilpauk, Chennai – 600 010.

3.The Directorate of Medical and Rural Health Services,
Rep. By Director of Medical and Rural Health Services,
359, Anna Salai,
Chennai – 600 006.

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

5.The Dean,
Coimbatore Medical College,
Coimbatore.

6.The Directorate of Medical and Rural Health Services,
Government Hospital,
Rameshwaram,
Ramnathapuram District.

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the respondent contained in the impugned posting order bearing R.No.92279/E7/A1/2021 dated 20.02.2024 issued by the 3rd respondent and to quash the same.

For Petitioner : Mr.P.Gnana Sekaran

For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

Heard both sides.

2. The petitioner successfully completed the PG course in the fifth respondent college in May, 2021. When the petitioner joined the course, he was a non service candidate. The petitioner 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 petitioner claims to have done the Covid Duty for sixteen months. The question is whether the petitioner should be called upon to undergo the balance period of service.



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4.The learned counsel appearing for the petitioner points out that as a student, the petitioner had rendered what is called as "Covid duty". The contention of the learned counsel appearing for the petitioner is that this should be treated as bond service. Since the petitioner's 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 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



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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 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



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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.

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-



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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 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 petitioner's 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.



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7.The learned counsel appearing for the petitioner 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 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 themselves and their lives to risk."

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 petitioner. It is declared



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that the Covid duty performed by the petitioner shall be treated as bond service. It is stated that the petitioner's original certificates are with the fifth 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 fifth respondent is directed to return the petitioner's original certificates forthwith and without delay. The second respondent is directed to formally relieve the petitioner 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.

10.This writ petition is allowed accordingly. No costs.

25.05.2024

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

To



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- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
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G.R.SWAMINATHAN,J.

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