



WEB COPY

W.P.No.15155 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.15155 of 2024

Dr.Maithreyi Swaminathan

.. Petitioner

VS

1.The State of Tamil Nadu

Rep. By its Principal Secretary,
Health and Family Department,
Secretariat, Chennai – 600 009.

2.The Directorate of Medical Education,
Kilpauk, Chennai – 600 010.

3.The Directorate of Public Health and Preventive Medicine,
Anna Salai, Teynampet,
Chennai – 600 086.

4.The Director of Medical and Rural Health Services,
Anna Salai, Teynampet,
Chennai – 600 086.

5.The Dean,
Madras Medical College,
Ponnamallee High Road,
Chennai – 600 003.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents herein to treat the petitioner's compulsory bond service as completed and consequently to direct the 5th respondent herein to return all the original certificates of the petitioner that were submitted by her at the time of their admission to the Post Graduate Super Speciality Degree Course (M.Ch.Pediatric Surgery) within a time period stipulated by this Court.

For Petitioner : Mr.P.Dinesh Kumar

For Respondents : Mr.K.Tippu Sultan



W.P.No.15155 of 2024

Government Advocate
ORDER

WEB COPY

Heard Mr.P.Dinesh Kumar, learned counsel for the petitioner and Mr.K.Tippu Sultan, learned Government Advocate for the respondents.

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.

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



W.P.No.15155 of 2024

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.

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.Nos25827, 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.



WEB COPY



W.P.No.15155 of 2024

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 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



WEB COPY



W.P.No.15155 of 2024

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 as set out by the petitioner under tabulation dated 05.06.2024, received on 05.07.2024 duly verified and counter signed by Mr.Tippu Sultan, learned Government Advocate, are as follows:



W.P.No.15155 of 2024

PETITIONER NAME	PG COURSE DURATION	PG COURSE/COLLEGE	POSTING ORDER DATE AND PRESENT WORK PLACE	COVID-19 DUTY PERIOD	No. Of Working Days in Govt Bond Period
Dr.Maithreyi Swaminathan	December 2020 to December 2023	M.Ch Pediatric Surgery/Madras Medical College	Attended Counselling on 23.01.2024 and 30.04.2024 but no posting order given due to "No vacancy"	31.12.2020 to 30.06.2022 Covid Duty Certificate is enclosed in Paper Book	NA

5. Mr.K.Tippu Sultan, learned Government Advocate has filed a counter affidavit dated 05.07.2024 signed by Dean, Madras Medical College, Chennai. The period of covid duty as per covid duty certificate dated 30.01.2024 is from 31.12.2020 to 30.06.2022 and this has been confirmed by R5/Dean, Madras Medical College in affidavit dated 05.07.2024 at paragraph 7 thereof, reading thus:

'7. It is also submitted that the Head of the Department, Department of Pediatrics Surgery ICH has certified that the above petitioner have performed Covid duty for a period of 1 year and 6 months'

6. Petitioner had completed a course in M.Ch Pediatric Surgery in December, 2023. She had not received posting orders till date and as per 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, the posting orders are to run co-terminus with the period of successful completion of course of the candidate.

7. That apart, the Health and Family Welfare (MCA-1) Department vide G.O.Ms.No.351 dated 27.10.2023 has issued an order to the effect that the bond period for Non Service Post Graduates (Degree/Diploma) who have completed their Post Graduate courses in



W.P.No.15155 of 2024

the year 2023 will be reduced from two years to one year. The benefit of this reduction is thus available to the present petitioner.

8. Petitioner had rendered covid duty for a period of 1 year and 6 months, which is in excess of the requirement of one year as per Government Order dated 27.10.2023. She is thus entitled to the return of the certificates as sought for.

9. This Court has passed several orders after having taken note of the details of the service by the respective petitioner. On 22.04.2024, S.M.Subramaniam,J in W.P.Nos.10799, 10826 and 10829 of 2024 has taken a view that the covid duty should not be taken to be included in the period of bond.

10. However, the first Bench of this Court in W.P.Nos.25827, 25785 and 27568 of 2023, decided on 16.11.2023, extracted supra, has equated the duty performed by the medical officers to post graduate students, for grant of incentive marks for the services rendered by them during Covid -19 period.

11. In accepting the case of similarly placed candidates, I have drawn an analogy from the above order, where medical officers and doctors studying PG courses have been equated for the purpose of bond duty. In my view, this inference is a direct consequence of the observations in paragraph 7.1 of order dated 16.11.2023. Moreover, order dated 22.04.2024 of the learned single judge has been stayed by the Division Bench in C.M.P.No.11300 of 2023 in W.A.No.1616 of 2024 vide order dated 24.05.2024.



WEB COPY



W.P.No.15155 of 2024

DR. ANITA SUMANTH,J.

12. In light of the above discussion, Petitioner is released from bonded Government service and there is a direction to the Dean of Madras Medical College to return her original certificates when petitioner presents herself before him, forthwith.

13.This Writ Petition is allowed. No costs.

05.07.2024

Index:Yes/No

Neutral Citation:Yes

ssm

To

- 1.The Principal Secretary,
Health and Family Department,
Secretariat, Chennai – 600 009.
- 2.The Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.The Directorate of Public Health and Preventive Medicine,
Anna Salai, Teynampet,
Chennai – 600 086.
- 4.The Director of Medical and Rural Health Services,
Anna Salai, Teynampet,
Chennai – 600 086.
- 5.The Dean,
Madras Medical College,
Ponnamallee High Road,
Chennai – 600 003.

W.P.No.15155 of 2024