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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.15366 of 2024
& WMP.Nos.16692 and 16695 of 2024

1. Dr.D.Prem Kumar
2. Dr.M.Vinoj
3. Dr.Vaishnavi Devi R. Petitioners

VS

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.
- 2.Directorate of Medical Education,
Rep. by its Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.Directorate of Medical and Rural Health Services,
Rep. by the Director of Medical Health and Rural Health Services,
359, Anna Salai, Chennai - 600 006.
- 4.Directorate of Public Health and Preventive Medicine,
Rep. by the Director of Public Health and Preventive Medicine,
359, Anna Salai, Chennai - 600 006.
5. Government Mohan Kumaramangalam Medical College,
represented by its Dean
For Main Road, Salem – 636 002.
6. The Joint Director of Health Services,
Erode.



7. Government Kalaingar Centenary Super Speciality Hospital
represented by its Superintendent
Alandur Road, Guindy, Chennai – 600 032.

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8. Madras Medical College
Represented by its Dean,
E.V.R. Salai, Chennai – 600 003.

.... 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' compulsory bond period as completed and consequently, direct the Respondent Nos.2 to 7 to issue an order relieving the petitioners from bonded service, and direct the 8th Respondent to return the Petitioners' original certificates and documents along with their super speciality and post-graduate degree certificates.

For Petitioners : Mr. Shurith Parthasarathy

For Respondents : Mr. K. Tippu Sultan
Government Advocate

ORDER

WMP No.16692 of 2024 filed seeking permission to file a single Writ Petition is ordered on payment of separate Court fee.

2. Heard Mr. Shurith Parthasarathy, learned counsel for the petitioner and Mr. K. Tippu Sultan, learned Government Advocate for the respondents.

3. I have considered an identical prayer as in the present Writ Petition in W.P.No.28238 of 2023 and have held as follows:



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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 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-



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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.

4. 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



WEB COPY

W.P.No.15366 of



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 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



WEB COPY

W.P.No.15366 of



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.

5. The petitioners 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 and Super Speciality courses completed by the petitioners and the number of days of covid duty rendered by the petitioners as per the certificates issued by the respondents as set out by the petitioners under tabulation dated Nil, received on 21.06.2024 duly verified and counter signed by Mr.Tippu Sultan, learned Government Advocate, are as follows:

PETITIONER NAME	PG COURSE & COLLEGE (MAY 2016 to MAY 2019)	PG BOND DURATION & PLACE OF POSTING	SS COURSE & COLLEGE (DECEMBER 2020 TO JANUARY 2024)	DURATION OF COVID-19 DUTY	DATE OF POSTING ORDER	PLACE OF POSTING	DURATION OF BOND DUTY	COMMENTS
Dr.D.Prem Kumar	NA	NA	Madras Medical College DM Nephrology	01.03.2021 to 31.03.2022 (1 year and 1 month)	07.02.2024	Government Mohan Kumara mangalam Medical College, Salem.	22.02.2024 till date	-
Dr.M.Vinoj	Madurai Medical College MD General Medicine	28.08.2019 to 11.12.2020 at Government Hospital, Rasipuram, Namakkal (1 year, 3 months, 14 days)	Madras Medical College DM Nephrology	01.03.2021 to 31.03.2022 (1 year and 1 month)	07.02.2024	Government Headquarters Hospital, Erode	06.03.2024 till date	Out of the 3 years bond (2 years after PG and 1 year after SS), Dr.M.Vinoj has completed 2 years. 10 months and 22 days and has 39 days remaining in the bond duration ¹

- 1 Delay in issuing bond posting after PG :2 months, 19 days (80 days)
Duration of bond duty undertaken after PG : 1 year, 3 months, 14 days (472 days)
Duration of covid duty undertaken during SS: 1 year and 1 month (396 days)
Duration of bond duty undertaken after SS : 3 months, 16 days (108 days)
Total : 2 years 10 months 22 days (1056 days)



PETITIONER NAME	PG COURSE & COLLEGE (MAY 2016 to MAY 2019)	PG BOND DURATION & PLACE OF POSTING	SS COURSE & COLLEGE (DECEMBER 2020 TO JANUARY 2024)	DURATION OF COVID- 19 DUTY	DATE OF POSTING ORDER	PLACE OF POSTING	DURATION OF BOND DUTY	COMMENT S
Dr.Vaishnavi Devi R.	NA	NA	Madras Medical College DM Nephrology	01.03.2021 to 31.03.2022 (1 year and 1 month)	07.02.2024	Government Kalaigamar Centenary Super Speciality Hospital	26.02.2024 till date	-

6. Mr.K.Tippu Sultan, learned Government Advocate has filed a common counter affidavit dated Nil signed by Dean, Madras Medical College, Chennai on 27.06.2024. The counter at paragraph 11 states as follows:

'11. It is also submitted that the Director, Institute of Nephrology, RGGGH & MMC, Ch – 03 has certified that the above petitioners have performed covid duty for a period of 1 year and 1 month.'

7. However, there is a differentiation in the facts between the first and third petitioners on the one hand and the second petitioner on the other. The counter does not advert to this factual differentiation and, to that extent is incomplete. However, the tabulation of dates and events has been duly verified and confirmed by the respondents and is taken to represent the correct position of facts.

8. Petitioners 1 and 3 had completed a course in DM Nephrology in January, 2024. They have received posting orders on 07.02.2024 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.

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9. That apart, the Health and Family Welfare (MCA-1) Department vide G.O.Ms.No.49 dated 28.02.2024 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 (Dental/Super Speciality) from the year 2023 onwards (that year included) will be reduced from two years to one year. The benefit of this reduction is thus available to the present petitioners.

10. Petitioners 1 and 3 had rendered covid duty for a period of 1 year and 1 month, which is in excess of the requirement of one year as per Government Order dated 28.02.2024. They are thus entitled to the return of the certificates as sought for.

11. The second petitioner, viz., Dr.M.Vinoj, had, prior to DM Nephrology course, completed his MD in General Medicine in Madurai Medical College. The bond period in his case is thus three years. According to him, he has satisfied the bond condition in the following manner:

Delay in issuing bond posting after PG : 2 months, 19 days (80 days)

Duration of bond duty undertaken after PG: 1 year, 3 months, 14 days (472days)

Duration of covid duty undertaken during SS: 1 year and 1 month (396 days)

Duration of bond duty undertaken after SS : 3 months, 16 days (108 days)

**Total****: 2 years 10 months 22 days (1056 days)**

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12. The period of three years will be completed on 31.07.2024 and on this Mr.Tippu Sultan has instructions to state that the computation is accurate. Though the Writ Petition is premature, this Court does not stand on a technicality as the petitioner is seen to be complying with the bond conditions appropriately. Hence, the second petitioner will thus entitled to return of certificates on and from 01.08.2024.

13. This Court has passed several orders after having taken note of the details of the service by the respective petitioners. 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.

14. 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.

15. I draw 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 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.

16. In light of the above discussion, Petitioners 1 and 3 are released from bonded Government service and there is a direction to the Dean of Madras Medical College to return their original certificates when petitioners 1 and 3 present themselves before him, forthwith.

17. The bond service of the second petitioner continues till 31.07.2024 and there is a direction to Dean of Madras Medical College to return his original certificates when he presents himself before him on and after 01.08.2024.

18. This Writ Petition is allowed in respect of first and third petitioner and disposed in respect of the second petitioner. No costs. Connected Miscellaneous Petition is closed.

28.06.2024

Index : Yes/No

Speaking Order: Yes

Neutral Citation: Yes

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WEB COPY

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