



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.24825 of 2024
and WMP No.27179 of 2024

Dr.M.Sabarinath

..Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Additional Chief Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Director of Medical Education and Research,
Kilpauk, Chennai 600 010

3. The Director of Public Health and Preventive Medicine,
DMS Complex, Anna Salai,
Teynampet, Chennai 600 006

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in R.No.6303682/PHC5/A3/2023-2 dated 13.03.2024 and to quash the same and



consequently directing the respondents to allow the petitioner to get relieved from service in accordance with the letter of resignation dated 21.11.2023 submitted by the petitioner forthwith.

For Petitioner : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan
For Respondents : Mrs.M.Sneha
Special Standing counsel
for R1 to R3

ORDER

This writ petition has been filed challenging the impugned proceedings of the 3rd respondent dated 13.03.2024 and for a consequential direction to the respondents to allow the petitioner to get relieved from services pursuant to the letter of resignation submitted by the petitioner dated 21.11.2023.

2. Heard Mr.G.Sankaran, learned Senior Counsel for Mr.S.Nedunchezhiyan, learned counsel for petitioner and Mrs.M.Sneha, learned Special Standing Counsel for Respondents 1 to 3.



3. The case of the petitioner is that he completed MBBS in the year 2010. Thereafter, he joined MD (Pediatrics) in the year 2011 as a non-service candidate and completed the same in the year 2014. He thereafter executed a bond and he was appointed as an Assistant Surgeon at Kancheepuram Head Quarters Hospital on 24.08.2014 on bond service. The petitioner completed two years bond service in the year 2016. After the completion of this period, the petitioner wrote the special qualifying examination conducted by the Medical Recruitment Board in December 2016 and cleared the same. Thereafter, the order of regularization dated 31.12.2018 was issued. The services of the petitioner was regularized from the date of joining on 28.06.2014.

4. The further case of the petitioner is that for the academic session 2017 – 2018, admission for Super Speciality Courses was called for. The petitioner wrote the NEET examinations and he secured admission in DM (Clinical Immunology and Rheumatology). He was given admission under the open category and the petitioner claims that there was no service quota for admission to the Super Speciality Course and therefore, the appointment of the petitioner and his regularization had nothing to do with his selection to the Super



Speciality Course.

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5. The petitioner was called to execute a bond to serve the Government of Tamil Nadu for a period of not less than five years and on failure to complete the bond period, the petitioner had to pay a sum of Rs.50 lakhs. This bond was executed by the petitioner on 26.11.2018.

6. The petitioner submitted a resignation letter on 22.11.2023 expressing his intension to resign. On receipt of the same, the impugned proceedings dated 13.03.2024 came to be issued whereby the request made by the petitioner was rejected and the petitioner was informed that the contractual obligation under the bond mandated the petitioner to work till his superannuation. Aggrieved by the same, the present writ petition has been filed before this Court.

7. The main ground that was raised by the learned Senior counsel appearing on behalf of the petitioner is that when the petitioner participated in the selection, there was no quota for the service candidates and therefore, there



was no occasion to consider service and non service at that point of time and persons falling under both the categories will have to apply and participate in the selection only in the open quota. In view of the same, it was contended that the petitioner had participated in the selection only as a non-service candidate. The learned Senior counsel also submitted that the bond was executed by the petitioner only in his capacity as a non service candidate and that is the reason why the bond itself stipulated five years period or Rs.50 lakhs in the absence of fulfilling the period of bond.

8. The learned Senior counsel further contended that the issue regarding service and non-service candidates had a relevance only when the 50% quota was allotted to the service candidates even in Super Speciality course. This did not take place when the petitioner participated in the selection during the academic year 2017-2018.

9. Per contra, the learned Special Counsel submitted that the petitioner was appointed as an Assistant Surgeon and after the completion of two years bond period, the petitioner cleared the special qualifying examination and the



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service of the petitioner was regularized from the date of his initial appointment by an order dated 31.12.2018. In view of the same, the petitioner has to be necessarily considered only as a service candidate. The learned counsel further submitted that as per GO Ms.No.410 dated 10.09.2018, insofar as the service candidates are concerned, all those candidates who were selected to Super Speciality Courses must execute a bond and they must undertake to serve the Government till the date of superannuation failing which they have to pay a sum of Rs.50 lakhs. It was submitted that the petitioner who was a service candidate at the relevant point of time and who got selected in the Super Speciality Course, will fall within that portion of the Government Order which contemplated serving the Government till the date of superannuation. The period of two years that was fixed under this Government Order pertains to only non service candidates and it will not apply to the case of the petitioner. The learned counsel submitted that the petitioner is a service candidate who is occupying a sanctioned post and he is paid the regular salary. Hence, if the petitioner is to be considered as a non service candidate, he will only be entitled for stipend and whereas that is not the case in hand. It was further contended that the agreement bond must be read as a whole and it clearly provided that insofar as the service



candidate is concerned, the candidate must serve the Government till superannuation and insofar as the non service candidate is concerned, the candidate must serve for five years. In both cases, on default, a sum of Rs.50 Lakhs is payable by a candidate. In view of the same, the learned counsel submitted that the petitioner cannot be permitted to wriggle out of the obligation under the bond and the petitioner has to either serve till the superannuation or the petitioner must pay a sum of Rs.50 lakhs under the bond and in which case, the petitioner will be relieved from service.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The averments made in the affidavit along with the materials that have been placed before this Court shows that the petitioner after completing his Post Graduation in MD (Pediatrics) in 2014, was appointed as a Assistant Surgeon in Kancheepuram Head quarters Hospital. The petitioner had executed a bond for a period of two years from 2014-2016. At this point of time, the petitioner was only performing his bond service and his employment was only



under 10A (1).

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12. After completion of the bond period, the petitioner wrote the special qualifying examination and on clearing the same, order of regularization dated 31.12.2018, was issued regularizing the service of the petitioner from the date of his initial appointment on 28.06.2014. Thus, on that day, the petitioner automatically becomes a service candidate.

13. The petitioner was aspiring to do Super Speciality Course. Therefore, the petitioner wrote NEET -SS-2018 based on which the petitioner secured an admission in Madras Medical College for the academic Session 2018-2019. At the relevant point of time, there was no quota for a service candidate at the Super Speciality level. Therefore, while participating in this selection, both service and non-service candidate will have to participate under the open quota. In other words, the status of the candidate either as a service or non service candidate had no bearing insofar as participating in the selection for the Super Speciality Course.



14. When the petitioner got the admission in the year 2018, he was called upon to execute a bond on 22.11.2018. As on that date, the petitioner was certainly a service candidate since his services had been regularized with effect from his date of joining on 28.06.2014.

15. On carefully going through the agreement bond, it is seen that the indemnity bond has been given by the petitioner to serve for a period of five years or to pay a sum of Rs.50 lakhs in default to complete this period. Even though, the 2nd paragraph in that bond talks about the conditions for the service and non service candidates, subsequent clause only shows that the petitioner was asked to serve for a minimum period of five years or to pay a sum of Rs.50 lakhs in default to serve for that period. Ultimately, both sides are bound by the terms of the contract.

16. As already held by this Court, the petitioner without any doubt is a service candidate. However, the agreement bond that has been executed does not treat the petitioner as a service candidate since the period of service has been confined to five years and in default, the petitioner has to pay a sum of Rs.50



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lakhs. It is quite clear that the bond has been filled up in a mechanical fashion and the authorities did not even care to properly scrutinize the bond since the fact remains that the petitioner was a service candidate at the time of filling up the bond. Therefore, as per GO Ms.No.410 dated 10.09.2018, if the petitioner is a service candidate, he should serve the Government till Superannuation. However, the indemnity bond has been taken from the petitioner for serving for a period of five years and in default, to pay a sum of Rs.50 lakhs.

17. There is no dispute that the petitioner is holding a sanctioned post and he is being paid the appropriate salary for the said post. If the petitioner is a non service candidate and he his only performing his bond service, what will be paid to the petitioner is only a stipend. Admittedly, the petitioner is only receiving monthly salary.

18. If the petitioner is going to claim that he is not a service candidate and that he is only a non service candidate, the petitioner must first give up his appointment and the regularization that was made in favour of the petitioner through proceedings dated 31.12.2018. That apart, the petitioner must also



refund the amount that was paid to him by way of a salary in excess of what he would have received as stipend if he is a non service candidate and was doing his bond service. Unless all these events takes place, the petitioner cannot be allowed to take advantage of the bond and also continue with his appointment as a service candidate. In short, the petitioner cannot have a cake and eat it too.

19. In the light of the above discussion, this Court does not find any illegality in the impugned proceedings of the 3rd respondent dated 13.03.2024. The 3rd respondent has considered the petitioner as a service candidate and hence, the 3rd respondent has instructed that the petitioner must serve till his superannuation or he must pay a sum of Rs.50 lakhs in default. If the petitioner wants to be treated as a non service candidate, the petitioner has to first submit a letter before the 2nd respondent by making it clear that he is not claiming any right of appointment or regularization as per the proceedings dated 31.12.2018. That apart, he must also undertake that he will refund the excess amount received by him as salary over and above what he would have received as Stipend if he was merely performing the bond service. If any such letter / representation is made by the petitioner to the 2nd respondent, the same shall be



considered and acted upon and appropriate orders shall be passed. The petitioner shall be bound by the five years bond period as per the agreement bond dated 22.11.2018 and he shall be relieved thereafter.

20. This writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

01.10.2024

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order

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To

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N. ANAND VENKATESH, J.

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