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W.P.No.27606 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.27606 of 2023
and WMP.No.27064 of 2023

Dr.Sushmitha

... Petitioner

Vs

- 1.The State of Tamil Nadu
Represented by the Principal Secretary
Health and Family Welfare Department
Fort St.George, Chennai.
- 2.The Directorate of Medical Education
Represented by the Director of Medical Education
Kilpauk, Chennai - 600 010.
- 3.The Directorate of Public Health
and Preventive Medicine
Represented by the Director of Public Health
and Preventive Medicine
359, Anna Salai
Chennai - 600 006.
- 4.The Dean
Madras Medical College
Chennai.

.... Respondents



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Prayer : Writ 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.3418534/E7/A1/2022-554 dated 31.05.2023 issued by the third respondent and to quash the same.

For Petitioner : Mr.P.Gnana Sekaran

For Respondents : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.M.Bindran &
Mr.T.Arunkumar
Additional Government Pleader for R1-R4

ORDER

The petitioner had joined her post graduation course in M.D.(Geriatrics) with the fourth respondent between 2018 and May ' 2021. At the time of joining the course, she had executed a bond to serve in a Government Hospital for a period of two years. She was also required to submit all her original certificates as a pre-condition to secure an admission to the above course and produced all her educational qualification from Class X to CRRI completion certificate, mark sheets, Medical Council Registration Certificate, etc., She completed her post graduation in May, 2021.



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2. On 31.05.2023, she was served with an order of appointment by the third respondent to serve for a period of six months as Assistant Surgeon under Category II of Class I of Tamil Nadu Medical Service in the Government Primary Health Centre, RS Mangalam, Ramanathapuram Health Unit District, and the said order had directed the petitioner to join the duty within two weeks of receipt of the posting order. Since the said order of appointment was served on the petitioner after the expiry of the two year term, she did not join. In terms of the dictum in ***State of Tamil Nadu and others Vs P.S.Sairam*** [2020 7 MLJ 513], this period of two years may have to be reckoned from the month immediately after the completion of the post graduation course. In other words, the petitioner might have to discharge her obligation in terms of the bond that she had executed between June, 2021 and May, 2023.

3. In the meantime, the petitioner has approached this Court with W.P.No.15027 of 2022, for return of her original certificates. And this Court, vide its order dated 29.11.2022 in W.P.No.15027 of 2022, has directed the respondents to return the original certificates to the petitioner, and the same is duly complied with.



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3. Be that as it may, a show cause notice dated 24.07.2023 was issued by the Deputy Director of Health Services, Ramanathapuram, invoking the Revenue of Recovery Act to realise such sum which the petitioner has undertaken to pay in lieu of serving the bond period. And so far as this show cause notice is concerned, the same has been stayed by this Court vide interim order dated 21.09.2023 in WMP.No.27064 of 2023.

4. Now the petitioner in the present writ petition has challenged the temporary appointment order issued by the third respondent dated 31.05.2023.

5. Heard both sides. If doctrine of *res ipsa loquitur* can apply to the situation before hand, it readily explains that the petitioner cannot be insisted to serve the bond period beyond the term as determined in the dictum in ***State of Tamil Nadu and others Vs P.S.Sairam*** [2020 7 MLJ 513]. Necessarily, the order of appointment dated 31.05.2023, is liable to be set aside, and so also anything that flows out of the said order of appointment.

Since the petitioner has already received her original educational certificates,



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no order is now required to be made separately.

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6. In conclusion, this petition is allowed, and the impugned order of appointment/posting dated 31.05.2023 issued by the third respondent is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order
ds

To:

- 1.The Principal Secretary
Health and Family Welfare Department
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- 2.The Director of Medical Education
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Kilpauk, Chennai - 600 010.
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N.SESHASAYEE.J.,

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