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W.P.No.31465 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31465 of 2022

Dr.S.Sathya

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Secretariat,
Chennai – 600 009.

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

3.The Dean,
Villupuram Medical College,
Villupuram.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to return the original educational qualification certificates of the petitioner to enable her to join as Senior Resident in ESIC Medical College and Hospital, K.K.Nagar, Chennai 600 078 based on the appointment order issued by the ESI Corporation, Chennai dated 17.11.2022, in consideration of the representation submitted by the petitioner dated 09.11.2022 and 18.11.2022 forthwith.



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For Petitioner : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan

For Respondents : Ms.M.Sneha
Special Counsel
for Health & Family Welfare Department

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to return the original educational qualification certificates of the petitioner to enable her to join as Senior Resident in ESIC Medical College and Hospital, K.K.Nagar, Chennai based on the appointment order issued by the ESI Corporation, Chennai dated 17.11.2022, in consideration of the representations submitted by the petitioner dated 09.11.2022 and 18.11.2022 forthwith.

2.The learned Senior Counsel appearing for the petitioner submitted that the petitioner completed her M.B.B.S.Degree in the year 2013 and she was selected for admission to Post Graduate Medical Course in Master of Surgery in Obstetrics and Gynaecology based on NEET – PG through All India Quota and she completed the three years MS (OG) Course in the year 2018. Thereafter vide order



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dated 07.08.2018, the petitioner was given appointment as Assistant Surgeon. Since the petitioner had given birth to a child on 31.05.2018, she made representation by referring to the maternity period with a request to defer her posting for bond service. Hence the petitioner was issued with further order of appointment dated 12.04.2019 towards bond service and accordingly, the petitioner joined the Vellore Medical College on 17.04.2019.

3.The learned Senior Counsel appearing for the petitioner further submitted that the petitioner was transferred to Villupuram Medical College on 01.11.2019 and since she developed pregnancy, she went on medical leave from 27.11.2019. The petitioner gave birth to the second child on 26.01.2020. The petitioner received communication from the third respondent College during the year 2020 and she approached the third respondent and explained not to join the bond service due to two infants to be taken care during pandemic situation and received further communication on 26.08.2021 from the office of the third respondent. Thereafter the petitioner received no communication from the third respondent.

4.The learned Senior Counsel appearing for the petitioner further



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submitted that the petitioner was selected for appointment to the post of Senior Resident in the Department of Obstetrics and Gynecology, based on the selection conducted by ESI Corporation and vide order dated 17.11.2022, the petitioner was posted as Senior Resident in ESIC Medical College and Hospital, K.K.Nagar, Chennai. Since the petitioner has to produce the original certificates to ESIC Medical College and Hospital, K.K.Nagar on joining the post of Senior Resident in the Department of Obstetrics and Gynaecology, she made representation to the third respondent to return the original educational qualification certificates, however, the same has not yet been considered.

5.The learned Senior Counsel appearing for the petitioner further submitted that though the petitioner completed the Post Graduation Course during May, 2018, she was given appointment order only on 07.08.2018 and since the petitioner had given birth to a child during May, 2018, based on her representation further order of appointment dated 12.04.2019 was given to the petitioner and she joined the Vellore Medical College on 17.04.2019. Hence, the period from May, 2018 to 12.04.2019 has to be excluded since she was not given appointment order immediately after completion of the Course.



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Further, the petitioner is entitled for maternity leave for 270 days and the said period has to be excluded and if the said periods are excluded, 20 months period have to be excluded from the bond period and the remaining bond period is only four months and the said period may be treated as co-terminus in terms of Clause 2 of the letter in Letter No.130/B1/2023-1, Health and Family Welfare (B1) Department dated 06.02.2024.

6.The learned Senior Counsel appearing for the petitioner further submitted that ESIC Medical College and Hospital is now coming under the purview of the Tamil Nadu State Service and hence, the petitioner can be treated as co-terminus and there is no legal impediment for the respondents to return the petitioner's original educational qualification certificates and to release Rs.10 Lakhs bond executed by the petitioner pursuant to the order of this Court dated 01.12.2022.

7.The learned Special Counsel for Health and Family Welfare Department appearing for the respondents submitted that the petitioner completed her M.B.B.S.Degree in the year 2013 and she was selected for admission to Post Graduate Medical Course in Master of Surgery in Obstetrics and Gynaecology based on NEET – PG through



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All India Quota, for which the petitioner executed bond in favour of the State and she completed the three years MS (OG) Course in the year 2018. Thereafter vide order dated 07.08.2018, the petitioner was given appointment as Assistant Surgeon.

8.The learned Special Counsel for Health and Family Welfare Department appearing for the respondents further submitted that as per the bond executed by the petitioner at the time of admission to Post Graduation Course, she has to render 24 months service in Government Hospital. The petitioner has only rendered 7 months of service in bond period and she has to render the remaining 17 months service. She further submitted that the service rendered by the petitioner is bond period and not Government service and hence, she is not entitled for maternity leave.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The petitioner has completed her M.B.B.S.Degree in the year 2013 and she was selected for admission to Post Graduate Medical Course in Master of Surgery in Obstetrics and Gynaecology based on



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NEET – PG through All India Quota and she completed the three years MS (OG) Course in the year 2018. Thereafter vide order dated 07.08.2018, the petitioner was given appointment as Assistant Surgeon. Hence, there is a delay of four months in issuing the appointment order.

11.It is undisputed fact that the petitioner joined the Vellore Medical College on 17.04.2019 and thereafter transferred to Villupuram Medical College on 01.11.2019 and since she developed pregnancy, she went on medical leave from 27.11.2019. Hence, the petitioner has rendered service in Governance Medical College for a period of seven months.

12.Since the petitioner rendered service in a Government College, she is entitled for maternity leave and the petitioner is entitled for maternity leave for a period of nine months at the relevant point of time. Hence, a period of 20 months (4 + 7 + 9) has to be excluded in the bond period and the remaining bond period is only four months.

13.Since ESIC Medical College and Hospital is now coming under the purview of the Tamil Nadu State Service, this Court directs the



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respondents to treat the petitioner as co-terminus for four months and to release Rs.10 Lakhs bond executed by the petitioner, within a period of four weeks from the date of receipt of a copy of this order. It is needless to state that the respondents shall return the petitioner's original educational qualification certificates so as to enable the petitioner to join the post of Senior Resident in ESIC Medical College and Hospital, K.K.Nagar, Chennai.

14.The writ petition is disposed of on the above terms. No costs.

22.08.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Secretariat,
Chennai – 600 009.

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

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M.DHANDAPANI,J.
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