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W.P.No.33475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.33475 of 2022
and WMP.Nos.32917 & 32918 of 2022

Dr.Aarthi Ananda Kumar

... Petitioner

Vs

- 1.The State of Tamil Nadu
Represented by its Principal Secretary
Health and Family Department
Secretariat, Chennai - 600 009.
- 2.Directorate of Medical Education
Represented by the Director of Medical Education
Kilpauk, Chennai - 600 010.
- 3.Directorate of Public Health and Preventive Medicine
Represented by the Director of Public Health
and Preventive Medicine
359, Anna Salai, Chennai - 600 006.
- 4.Madras Medical College
Represented by its Dean
E.V.R. Salai, Chennai - 600 003.
- 5.National Medical Commission
Represented by its Secretary
Pocket 14, Sector-8, Dwarka Phase I
New Delhi - 110 077.

Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent contained in its order bearing R.No.40914/E7/A1/2020-381 dated 11.10.2022 and to quash the same as arbitrary, unjust and illegal and to consequently direct the fourth respondent to return the petitioner's original certificates and documents along with her post graduate diploma certificate and pass such order as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.Suhrith Parthasarathy

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

ORDER

This petition is filed challenging the order of appointment dated 11.10.2022 purported, pursuant to the bond which the petitioner had executed at the time when she joined the post graduate diploma course in Medicine, and also for return of her original educational certificates.

2. During the pendency of this petition, vide an interim order dated



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26.04.2023, her educational documents are directed to be returned to the petitioner, and this has been complied with. What remains to be considered is the challenge to the order of appointment dated 11.10.2022.

3. The facts are :

- (a) Between May, 2018 and May, 2020, the petitioner had done her post graduate diploma in Medical Radio Diagnosis. At the time of joining the course, she had executed a bond to serve in a Government Hospital for two years. This period commences from June 2020 and expires on May, 2022.
- (b) She was also required to submit all her educational original certificates as a compulsory pre-condition to secure an admission to the above course. She complied with the conditions, and secured an admission in the fourth respondent-college by producing the certificates required by it, and completed her post graduation in May, 2020.
- (c) While so, some six months after completion of her post graduation course, to be precise on 26.12.2020, she was served with a temporary posting order for a period of three months to serve in National Centre of Ageing, Guindy, Chennai. The petitioner however, could not join the course as she was then conceived.



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(d) The entire bond period, in terms of the dictum in ***State of Tamil Nadu and others Vs P.S.Sairam*** [2020 7 MLJ 513], expired by May 2022.

However, an another three months may have to be added since the petitioner could not join the duty pursuant to the temporary posting for three months given to her vide order of appointment dated 26.12.2020. This implies the entire bond period after including this extended period will come to an end in August, 2022.

(e) Some two months thereafter on 05.11.2022, the petitioner received a posting order from the third respondent dated 11.10.2022, to serve as an Assistant Surgeon in Government Headquarters Hospital, Kovilpatty, Thoothukoodi District for a period of two years. The petitioner is also stated to have received yet another communication dated 31.10.2022 from the Social Welfare Department, Thoothukudi, reporting her failure to join duty pursuant to the posting order dated 11.10.2022, and also required the petitioner to join the duty within three days from the date of receipt of said order.

(f) According to the petitioner, both these orders dated 11.10.2022 and 31.10.2022 was received by her only on 05.11.2022.

Since, the order of appointment dated 11.10.2022 is contrary to the dictum



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in ***P.S.Sairam case***, the petitioner seeks that it be quashed.

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4. Heard the learned Additional Advocate General, who made a statement on instructions that there is no administrative lapses involved in issuing the postings, but the Government faces constraint in making appointments, since the vacancies are not available.

5. While this Court shares its concern vis-a-vis the statement made by the learned Additional Advocate General, it cannot breach the dictum laid down by the First Bench of this Court in ***P.S.Sairam case***. Consequently, the order of appointment dated 11.10.2022, cannot be sustained, and is liable to be set aside.

6. Having stated thus, this Court only urges the respondents to come out with a workable formula, by which those petitioners who are willing to serve are provided with appropriate postings commensurate with their qualifications soon after the completion of the course. It has to be stated that this statement, this Court repeatedly makes, but the response of the respondents is yet to be encouraging.



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7. To conclude, this petition is allowed and the order of appointment dated 11.10.2022, issued by the third respondent is hereby quashed. No costs.

Consequently, connected miscellaneous petitions are closed.

02.01.2024

Index : Yes / No

Speaking order / Non-speaking order
ds



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N.SESHASAYEE.J.,

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