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W.P.No.33051 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

**W.P.No.33051 of 2023 &
WMP.No.32736 of 2023**

Dr. Sameera M.

... Petitioner

Vs.

- 1.State of Tamil Nadu,
represented by its Principal Secretary,
Health and Family (MCA-I) Department,
Fort St. George, Chennai 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.
3. The Selection Committee,
represented by its Secretary,
Directorate of Medical Education,
162, Periyar E.V.R., High Road,
Chennai 500 010.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to permit the petitioner to resign/discontinue from the M.S Ophthalmology seat in Velammal Medical College, Madurai allotted to the petitioner in Round No.1 of State Counselling for P.G.Degree courses without payment of



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discontinuation fees and without forfeiture of security fee and tuition fee and consequently, re-introduce the petitioner's seat to the seat matrix for allotment in the Special Stray Vacancy Round of State Counselling for P.G. Degree courses 2023.

For Petitioner : Mr. R. Manoharan

For Respondents : Mr. E. Sundaram, Govt. Advocate
for R1 & R2
Ms.M.Sneha for R3

ORDER

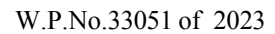
According to the petitioner, she is a qualified MBBS Doctor and joined the Government Service and still continuing the same. In order to pursue her PG course, she appeared for NEET exam in 2023 and secured 397.2 marks and 5225 rank in the State Quota Merit List and upon her participating in first round of State Counselling for PG course, she was allotted a seat as a service candidate in MS.Ophthalmology seat in Velammal Medical College, Madurai and she joined in the said course. Since, she faced a toxic and hostile environment in the abovesaid college and her father was also affected with lung cancer and is on treatment in Trivandrum, she decided to discontinue her PG studies in Madurai and applied for



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upgradation in the 2nd round of counselling in Tamilnadu Dr.MGR Medical University for the academic year 2023-2024. But she was not allotted any seat in 2nd round of counselling. Therefore, she applied for upgradation in the 3rd round of counselling, however, she did not get allotment. As she came to know that the respondents have permitted ineligible candidates in the 3rd round of counseling, challenging the result of the 3rd round of counselling, she filed W.P.No.31096 of 2023 seeking a direction to the respondents to revise the results of the 3rd round of counseling by removing ineligible candidates from the allotment list.

2. Pending writ petition, she decided to resign her M.S.Ophthalmology seat in Velammal Medical College, Madurai due to her mental health and depression. In case of her resignation, she is required to pay discontinuation fee of Rs.15 lakhs and also she has to forfeit the tuition fee and security fee paid by her to the tune of Rs.4,80,000/-. She conveyed her request to allow her to resign Ophthalmology seat without penalty and the said seat may be filled under special stray vacancy round. However, the 3rd respondent



3. It is the case of the petitioner that vide Notification No.U-12021/02/2023-MCC, dated 14.11.2023, the Directorate General of Health Services announced that a Special Stray Vacancy Round will be conducted for the State Quota Seats and the AIQ seats. In view of the said notification, the seat allotted to her in the 2nd round of counseling will be sent back to the seat matrix for allotment under Special Stray vacancy, hence there is no loss of seat. When there is no loss of seat, the act of the 3rd respondent insisting upon the petitioner to pay penalty for discontinuation of the course and also to forfeit the security fee and tuition fee paid by the petitioner is arbitrary and unsustainable.

4. Learned counsel for the petitioner submitted that during the pendency of the Writ Petition, this Court, by order dated 21.11.2023,

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permitted the petitioner to resign from the seat at her own risk and such seat shall be offered as part of the Special Stray Vacancy counseling commencing on 26.11.2023. Pursuant to the said order, the petitioner was allowed to resign from her seat and further, the seat was filled up in a Special Stray Vacancy counseling took place on 26.11.2023 and the very same seat was allotted to one Dr. Mahalakshmi, in service candidate. Subsequently, the petitioner was also posted in Government Primary health Centre, Valayapathy, Karur Health Unit District in the existing vacancy.

5. Further, the petitioner has not obtained any PG seat either in the same quota or in All India Quota subsequently in the State or Central Government. However, the petitioner was forced by the 3rd respondent to pay discontinuation fee as penalty and forfeit security deposit and tuition fee, which is arbitrary and illegal. Thus he prayed for appropriate direction.

6. Learned counsel appearing for the 3rd respondent submitted that in the case of *Moder Dental College and Research Centre and others Vs.*



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State of Madhya Pradesh and others, the Honourable Apex Court had observed that the States had exclusive power to legislate with respect to all aspects of education barring determination of standards and coordination by the Parliament i.e. State's rights in regulating medical education is preserved and hence, the State has every right to define and prescribe the admission, selection and counseling process in its quota of seats and there is no law/act which curtails this right. So the prospectus released by the Secretary, Selection Committee, Directorate of Medical Education is well within the purview of the State Government. The State permitted resignation twice, once on 01.09.2023 before the second round, and another on 29.09.2023 before the 3rd round. The petitioner being allotted a seat in round 2 wanted to retain the seat in round 3. Further, the petitioner discontinued the course on 22.11.2023 at the end of stray counseling following the interim order, when the state had permitted opportunity of resignation twice. The petitioner could have resign her seat prior to her decision of discontinuing, but she did so at a much later date. The petitioner very well know that after Round 2, there will be forfeiture of processing fee, security deposit, tuition



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fee paid by them and the candidates have to pay the penalty amount as mentioned in clause 26(iv) of the prospectus. Therefore, at this belated stage, the relief sought by the petitioner cannot be granted. Stating so, she prays for dismissal of the writ petition.

7. Heard both sides and perused the materials available on record.

8. Admittedly, it is not in dispute that the petitioner, by securing 397.2 marks and 5225 rank in the State Quota Merit list was selected and was allotted a seat in MS Ophthalmology set in Velammal Medical College, Madurai under Service Candidate Quota. Prior to that, the petitioner was appointed as a Doctor in Primary Health Centre, Panchapatty, RBSK(F), Karur Health Unit District. Due to her father's ill health, the petitioner decided to resign from PG medical Seat namely MS Ophthalmology in Velammal Medical College, Madurai. Pursuant to order passed by this Court on 21.11.2023, she was permitted to resign from her seat on her own risk. Accordingly, she had also resigned her seat. The very same seat was filled by one Dr.Mahalakshmi, in-service candidate Doctor under Special



Stray Vacancy counseling.

9. It is also not in dispute that since the seat resigned by the petitioner was subsequently, allotted to another candidate under Special Stray Vacancy counseling, there is no loss to the Government Exchequer causing waste of money. Equally, at the same time, the petitioner has also not secured any PG seat, either in the State Government or in All India Quota and subsequently she was appointed as a Doctor in the Primary Health Centre, Valayapatti, karur District in the existing vacancy. Still the petitioner is serving as a Government Doctor. In view of the above, since the seat resigned by the petitioner was not kept vacant and the same was filled up with a qualified candidate, there is no loss to the Government Exchequer. Hence, there is no need for payment of any discontinuation fee. However, whatever amount already paid by the petitioner cannot be refunded by the respondents. The petitioner is not entitled for refund of forfeiture of the amounts already paid by her. At the same time, the respondents are directed not to demand Rs.15 lakhs as discontinuation fees. The petitioner is not entitled to amounts already paid towards security fee and tuition fee.



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The respondents are directed to return all the original certificates of the petitioner to her within a period of one week from the date of receipt of a copy of this order.

10. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

18.09.2024

Index: yes/no
Internet:yes/no
msr

Note: Issue order copy on 20.09.2024

To

- 1.The Principal Secretary,
Health and Family (MCA-I) Department,
Fort St. George, Chennai 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.
3. The Secretary,

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Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R., High Road,
Chennai 500 010.

M. DHANDAPANI, J.

msr



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