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W.P.No.35672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.35672 of 2023
and
W.M.P.No.35644 of 2023

Dr.Bensi Benni Gasper

.. Petitioner

VS

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai - 09.
- 2.Directorate of Medical Education,
Rep. by the Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 3.Directorate of Medical and Rural Health Services
Rep. by the Director of Medical Health
and Rural Health Services,
359, Anna Salai, Chennai - 600 006.
- 4.Directorate of Public Health and Preventive Medicine,
Rep. by the Director of Public Health
and Preventive Medicine, 359,
Anna Salai, Chennai - 600 006.
- 5.Madras Medical College,
Rep. by its Dean,
EVR Salai, Chennai - 600 003.

.. Respondents



W.P.No.35672 of 2023

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to treat the petitioner's two year compulsory bond period as completed and to consequently direct the 5th respondent to return the petitioner's original certificates and documents collected by the 5th respondent while admitting the petitioner to the post graduate degree course along with his Post Graduate degree certificate.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.Tippu Sultan
Government Advocate

ORDER

This matter is listed today under the caption 'for being mentioned'.

2. The errors chronicled by way of memo filed today i.e., 05.03.2024, that reads as follows:-

“1.The present writ petition was disposed of by way of an order dated 14.02.2024. However, upon perusing the order, we noticed that there were certain errors in the table that was submitted on behalf of the Petitioner, which are as follows:-

Para / Table Reference	Existing Reference in order dated 14.02.2024	Required Correction (marked in bold)
Second column, first Row	PG in : (May 2019 to May 2022)	PG in : (May 2018 to May 2022)
Fifth column, second row	16.02.2022	16.02.2023
Sixth column, second row	12.05.2023 to 08.02.2024 (8 months, 28 days)	1 year and six months
Para 7	The Petitioner has received the posting order on 16.02.2022, but...	The petitioner has received the posting order dated 16.02.2023 , but

2. It is submitted that these errors were entirely



W.P.No.35672 of 2023

inadvertent, and counsel deeply regrets making them.

3. The revised table with the correct details is enclosed herewith. I request this Hon'ble Court to take the present Memo and the enclosed table on record and pass such orders as deemed fit, and thus render justice."

3. Fresh tabulation has been given setting out the correct particulars. Hence, order dated 14.02.2024 is re-called and fresh order is passed now.

4. Mr.Tippu Sultan, learned Government Advocate accepts notice for the respondents and is armed with instructions to enable final disposal of this matter, even at this juncture. Hence, by consent of both learned counsel, this Writ Petition is taken up for final disposal, even at the stage of admission.

5. I have considered an identical prayer as in the present Writ Petition in W.P.No.28238 of 2023 and have held as follows:

"The petitioner is a Doctor, who had completed Post Graduation in General Medicine from KAP Viswanathan Medical College in the non service category. He had completed the course in May, 2022 and had, at the time of admission to the course, executed a bond for a sum of Rs.40 lakhs undertaking that he would serve the State for a period of two years after completion of the course. The bond period, admittedly, runs till 31.05.2024.



WEB COPY



W.P.No.35672 of 2023

2. *Within a few months of commencing the course, the Covid 19 pandemic had struck and the petitioner, and, in fact several other identically / similarly placed candidates, were required to be on covid duty in R5 Hospital. Though no appointment orders could be issued seeing as the petitioner was a student then, his services during the covid period is not disputed as duty sheets for the service rendered have duly been produced by the petitioner and verified by the respondent counsel.*

3. *The question as to whether covid duty would constitute in-bond service is no longer res integra having been considered and accepted by two learned Judges in W.P.No.26556 of 2022 (decision dated 02.02.2023) and W.P.No.22894 of 2023 (decision dated 08.09.2023). In these cases, the petitioners were students who were required to perform covid duty during their course and this Court has held, and I concur with these decisions, that the covid duty rendered by the students should be taken note of as service during the bond period.*

4. *An additional question that arises in this case is as to whether quarantine relatable to covid period is also be taken as bond service. The period of quarantine is, in my considered view, nothing but an extension of covid duty itself as the Rules prevalent then required mandatory quarantine. The petitioner would well have continued with the duty in the covid ward itself has it not been for the mandate of compulsory quarantine. Thus, taking the period of*



WEB COPY



W.P.No.35672 of 2023

quarantine also as on-duty, such period in this case is quantified as 150 days. On-duty call sheets duly signed by the Dean of R5 college have been produced by the petitioner. This will advance the closure of bond period to 02.01.2024 from 31.05.2024.

5. The petitioner's request for a mandamus directing the respondents to treat compulsory bond period as concluding on 02.01.2024 is accepted. R5 is directed, upon completion of bond period on 02.01.2024, to return to the petitioner, his original certificates received at the time of admission to PG course. 6. Allowed in the above terms. No costs. Connected miscellaneous petition is closed."

6. Yet another development has been noted by me in W.P.Nos.32073, 33124, 32505, 32512, 29724 and 32380 of 2023 to following effect:

"The issue of treating Covid duty as period of duty for the purpose of computing of bond service now stands settled categorically by virtue of an order passed by the First Bench in W.P.Nos.25827, 25785 and 27568 of 2023, decided on 16.11.2023.

2. Those Writ Petitions relate to the recruitment of Assistant Surgeons. In the course of the discussion, the First Bench has settled the position that, both for the purpose of Under Graduate (UG) as well as Post Graduate (PG) medical education, the duties performed during covid period/treating covid patients should be



WEB COPY



W.P.No.35672 of 2023

treated as eligible duty.

3. The discussion from paragraph 7 onwards is clear to this effect and reads as follows:

7. It is true that the services rendered by the Post-Graduate students is part of their 36 months period training which they undergo. The said period is supposed to be the practical training towards the subject in which they undergo the study. Because of the abnormal situation arising out of the COVID - 19 pandemic, they were also roped in COVID - 19 duty in the COVID - 19 wards in the Government Hospitals. It is not in dispute that they put in the same kind of duty and underwent the same rigors as that of the other medical officers recruited by the State Government. As a matter of fact, the persons, who were recruited by the State Government for the said purpose of performing COVID - 19 duty in these wards which are set up as part of the disaster management, are categorised as 'Medical Officers'.

7.1. It may be seen that both these temporary appointees as well as the Post-Graduate medical students are registered medical practitioners eligible to be appointed as Assistant Surgeons. Service to the Health Department, Government of Tamil nadu is governed by the Statutory Rules known as Tamil Nadu Medical Service Rules. It contains two parts namely, Branch-I Medical and Branch-II Nursing. As far as the medical cadre is concerned, as per Rule 2, it is divided into Civil Surgeon cadre and Assistant Surgeon cadre. All the



WEB COPY



W.P.No.35672 of 2023

entry level posts of Assistant Surgeon in the general line, Non-Clinical Lectures, Tutors / Assistant Professors, Clinical Lecturers, Senior Residents / Assistant Professors and the Women State Family Planning Officer are all grouped under the cadre of Assistant Surgeon. Thus, it can be seen that there is no such post as such called 'Medical Officer'. But, the term 'Medical Officer' is widely used in the rules to denote every registered medical practitioner appointed to any post. When it comes to deputing personnel for the Chennai City Police, they are called Medical Officers to the Chennai City Police. The Senior Residents are also termed as 'Resident Medical Officers' Similarly, the term 'Medical Officer' is generally used in the context of referring to the person who is working in any capacity with the qualified medical degree (in common parlance, the Doctors working in the department).

4. Thus, the submission of the respondents to the effect that PG students were only been given 'training' and that such service must be disregarded for computation of duty/bond period cannot be accepted. In light of the decision of the First Bench cited supra affirming the principle that the duty performed by PG students during Covid period must be taken as regular medical service.

5. The State has now issued G.O.Ms.No.371 dated 18.11.2023 directing that the term 'Medical Officers' mentioned at Para 5.1(i) of G.O.(MS.) No.278, Health and Family Welfare (B1) Department dated 17.08.2023



W.P.No.35672 of 2023

be replaced as 'Medical Officers including Post Graduate Students'. The authorities have been directed to issue certificates confirming the number of days when covid duty was performed by the students.

6. In light of the above, let such certificates be issued to the petitioners at least two days prior to the next date of hearing. List on 05.12.2023. Written instructions/counter, if any, by then with an advance copy to the petitioners."

7. The petitioner had received and has placed on record covid duty certificates in terms of G.O.Ms.No.371 dated 18.11.2023 and G.O.(MS.) No.278 dated 17.08.2023. The details of the post-graduation courses completed by the petitioner and the number of days of covid duty rendered by the petitioner as per the certificates issued by the respondents, are as follows:

PETITIONER'S NAME	PG COLLEGE in (MAY 2018 TO May 2022)	PG COURSE	DURATION OF COVID-19 DUTY	DATE OF POSTING ORDER	DURATION MENTIONED IN THE POSTING ORDER
Dr.Bensi Benni Gasper	Madras Medical College (Respondent No.5)	MS Ophthalmology	26.05.2021 to 25.05.2022 (1 year)	16.02.2023	1 year and 6 months

8. Mr.Tippu Sultan, learned Government Advocate for the respondents would categorically confirm that the particulars as set out in the tabulation above have been verified with the authorities to be correct and representing the proper sequence of events.



W.P.No.35672 of 2023

9. The Health and Family Welfare (MCA-1) Department vide

G.O.Ms.No.17 dated 11.01.2024 has issued an order to the effect that the bond period for Non Service Post Graduates (Degree/Diploma) who have completed their Post Graduate courses in the year 2022 will be reduced from two years to one year. The benefit of this reduction is thus available to the present petitioner.

10. The petitioner has received the posting order on 16.02.2023, but not responded to the call for regular duty. It is unnecessary to go into the details of the call for regular duty, as the petitioner has rendered covid duty for a period of one year, which is in compliance with G.O., dated 11.01.2024.

11. The petitioner is hence released from bonded Government service and there is a direction to the Dean of Madras Medical College to return her original certificates when the petitioner presents herself before them, forthwith.

12. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions is closed.

05.03.2024

Index:Yes/No

Neutral Citation:Yes

ssm



W.P.No.35672 of 2023

To

WEB COPY

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai – 09.

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

3. The Director of Medical Health and Rural Health Services,
Directorate of Medical and Rural Health Services
359, Anna Salai, Chennai - 600 006.

4. The Director of Public Health and Preventive Medicine,
Directorate of Public Health and Preventive Medicine,
359, Anna Salai, Chennai - 600 006.

5. The Dean,
Madras Medical College,
EVR Salai, Chennai - 600 003.



WEB COPY



W.P.No.35672 of 2023

DR. ANITA SUMANTH,J.

ssm

W.P.No.35672 of 2023

05.03.2024