



WP(MD) No.18143 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.08.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.18143 of 2024
and
W.M.P(MD)No.15480 of 2024

Dr.P.Ranjan James

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai.
2. The Director of Medical and Rural Health Services,
O/o. Director of Medical and Rural Health Services,
Chennai-600 006.
3. The Director of Public Health and Preventive Medicine,
O/o.The Director of Public Health and Preventive Medicine,
Chennai-600 006.



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4. The Medical Officer,
Government Hospital,
Sivakasi,
Virudhunagar District.

5. The Dean,
Madras Medical College,
Chennai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings in R.No.6632442/E7/A1/2023-129 dated 13.07.2024 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates
For Respondents : Mr.J.Ashok
Additional Government Pleader

ORDER

The petitioner has filed this writ petition challenging the



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impugned order issued by the 3rd respondent vide his impugned proceedings in R.No.6632442/E7/A1/2023-129 dated 13.07.2024.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

4.The petitioner, who joined the Super Speciality Course in the fifth respondent College during the academic year 2020-2021 had given an undertaking that he will serve the Government of Tamil Nadu for a period not less than two years after completion of the course. The bond would further stipulate that in the event of failure to honour the undertaking, the petitioner would be paying the damages of Rs.50,00,000/-. The petitioner completed the course in January, 2024 and he was also ready to abide by the undertaking given by him. However, no offer of appointment was given to him and hence, he was not able to comply with the conditions of the bond. However, the



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certificates of the petitioner's were withheld and hence, the petitioner was compelled to file a litigation before the Court seeking for a direction to return his certificates.

5. The writ petition is filed by the petitioner in W.P. (MD)No.8365 of 2024 and an order came to be passed on 02.04.2024 directing the fifth respondent to return the original certificates of the petitioner without any delay. Since the order is not complied with, the petitioner had initiated contempt proceedings and thereafter, the petitioner got his certificates. Subsequently, the petitioner got an appointment elsewhere and he is working there. Now, the petitioner was issued with an appointment order, dated 13.07.2024 by the third respondent by offering him to join as Assistant Surgeon in the Government Hospital, Sivakasi, Virudhunagar District. Now, this writ petition has been filed challenging the above order of appointment.

6. The learned Senior Counsel for the petitioner submitted that the above appointment order has been issued as out of vengeance, developed consequent to the earlier writ petition filed by the petitioner seeking direction to return of his original certificates.



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7. One of the terms of appointment would state that the appointment of the petitioner under Section 19(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is purely temporary and for the purpose of fulfilling the bond condition to serve in Government Institution, the learned Senior Counsel for the petitioner submitted that the bond itself does not survive, in view of failure to offer the job to the petitioner after he completed his course in the month of January, 2024 and the bond itself has got frustrated in view of the non-compliance of its terms, immediately after the petitioner completed his course during January, 2024. Hence, he got back his certificates in compliance of the order passed earlier in W.P.(MD)No.8363 of 2023, dated 02.04.2024.

8. According to his submission, the appointment order is only a motivated one, just to embarrass the petitioner knowing pretty well that in the event of petitioner's rejection of the appointment, a chance can be taken for recovering the bond amount. Hence, it is prayed to set aside the above order.



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9. Mr.J.Ashok, learned Additional Government Pleader, who took notice on behalf of the respondents, sought time for filing counter.

10. In my considered opinion, the typed set of papers contained the earlier orders passed in this regard which has the observation about the Government's failure to accommodate the petitioner in any vacancy as per the terms of the bond. So, the matter has to be argued only on the basis of available records and it does not require any factual aspects to be dealt with. Hence, the request of the learned Additional Government Pleader for filing counter is not considered and no counter is ordered as per Rule 24(2) of Writ Rules of Madras High Court. To order counter without necessity in a matter does not require any further details will only delay the proceedings and heap up the pendency.

11. In the earlier order, dated 02.04.2024 made in W.P. (MD)No.8365 of 2024, this Court has observed as under :

“3.The petitioner had successfully completed the course in January 2024. The petitioner was ready



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to abide by the undertaking given by him. But then, the Government could not accommodate him in any vacancy. No offer has been made to the petitioner. The petitioner's certificates have also not been returned. Therefore, the present writ petition has been filed.

4.The learned senior counsel draws my attention to the orders passed by this Court. In fact, vide order dated 06.10.2022 in W.A.No.2256 of 2022 etc., while sitting in Division Bench, I had directed the college concerned to return the original certificates to the candidate. In that case, I had given liberty to the colleges to proceed against the petitioners therein for enforcing the terms of the bond for damages. In this case, the question of giving such liberty does not arise at all. I can understand, if the authorities made an offer to the petitioner to serve the Government of Tamil Nadu and the petitioner had declined. Since no offer has been made by the respondents, the question of granting any liberty to the respondents will not arise at all.

5.The question as to whether the certificates can be retained by the fifth respondent is no longer res integra. In case after case, it has been held that the educational certificates are not marketable commodities within the meaning of Section 171 of the



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Indian Contract Act, 1872 and there cannot be any exercise of lien over the certificates”

12. The aforesaid order passed in the writ petition was not put to challenge by any other respondents and hence, the order passed in the writ petition has attained its finality. In fact, an observation has been made in the above order that the educational certificates are not marketable commodity within the meaning of Section 171 of the Indian Contracts Act, 1872 and there cannot be any lien over the same. It is further observed that when the petitioner was not ready to abide by the undertaking given by them, no liberty can be given to the Colleges to proceed against the petitioner for enforcing the terms, especially, the bond for damages.

13. The above observation is sufficient to hold that the bond has got already revoked, pursuant to that, the petitioner has also got the certificate back. In such a condition, it is upto the petitioner either to accept the appointment order or not to accept the appointment order. But the petitioner has rushed to the Court with an apprehension that in the event of his failure to accept the appointment order, the respondent



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might resort to the process of recovery damages in terms of earlier bond executed by him on 22.01.2021.

14. Since the position with regard to the enforceability of the terms of bond has already been dealt with and an order has been passed and the same has not been challenged the bond is nor more in force. Hence, it is upto the petitioner either to take the appointment or to reject the same, at his whims, without any conditions attached to pay damages. It is reiterated that in view of the earlier order of this Court, the bond executed by him got revoked and revocation has also been acted upon by returning the certificates to the petitioner.

15. With the above observations, this writ petition is **disposed of**. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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R.N.MANJULA, J.

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