

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.10275 of 2020

and

W.M.P.(MD) No.9153 of 2020

Dr.Samjaison

.... Petitioner

Vs.

1) The Deputy Director of Health Services,
Paramakudi,
Ramanathapuram District.

2) The Director of Public Health,
Chennai.

3) The Block Medical Officer,
Government Primary Health Centre,
Sayalkudi, Ramanathapuram District.

4) The Director,
National Board of Examinations,
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi 110029

5) The Director,
Dr.Rangarajan Memorial Hospital,,
Shanthi Colony, Anna Nagar,
Chennai.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 and 2 to return the original certificates of the petitioner viz. SSLC, HSC, CRRI Completion Certificate, Degree Certificate,

MCI Registration Certificate, Community Certificate, Course cum Conduct Certificate for the purpose of admission into DNB General Surgery (Broad Speciality) Course in the 5th respondent Hospital by considering the petitioner's representation dated 18.08.2020.

For Petitioner : Mr.K.Jayamohan
For Mr.G.Prabhu Rajadurai

For RR 1 to 4 : Mr.K.Mu.Muthu,
Additional Government Pleader

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents 1 and 2 to return the original certificates of the petitioner viz. SSLC, HSC, CRRI Completion Certificate, Degree Certificate, MCI Registration Certificate, Community Certificate, Course cum Conduct Certificate for the purpose of admission into DNB General Surgery (Broad Speciality) Course in the 5th respondent Hospital, by considering the petitioner's representation, dated 18.08.2020.

2. The petitioner was appointed as Assistant Surgeon (General) vide appointment order of the second respondent, dated 31.10.2019 and he was posted at Government Primary Health Centre, Erwadi, Paramakudi Health Unit District. Pursuant to the said appointment order, he joined service on 26.11.2019 and he has been continuously working.

3. In the meanwhile, since the petitioner wanted to pursue Post Graduate Course in Medical Service, he participated in the competitive examination and ultimately, he has been selected for admission to the course of Post Graduate in DNB General Surgery (Broad Speciality) and accordingly, the allotment order was given on 17.08.2020 by the fourth respondent/ National Board of Examinations, according to which, the petitioner should report to the allotted Institution on or before 20.08.2020.

4. In anticipation of such selection, the petitioner decided to kick off his job. Accordingly, he has tendered his resignation on 29.07.2020 to the second respondent and the second respondent forwarded the same to the third respondent for necessary action. The said resignation of the petitioner was forwarded by the third respondent to the first respondent for appropriate action, by communication dated 29.07.2020 which reads thus:

“சாயல்குடி வட்டார அரசு ஆரம்ப சுகாதார நிலையத்திற்குட்பட்ட ஏர்வாடி அரசு ஆரம்ப சுகாதார நிலையத்தில் உதவி மருத்துவ அலுவலராக பணிபுரியும் மரு.ஜ.சாம்ஜெயசன் என்பவர் தனது குடும்ப சூழ்நிலை காரணமாக 28.07.2020 முதல் பணியை இராஜினாமா செய்துள்ளார். பார்வையின்படி உரியவரிடமிருந்து பெறப்பட்ட இராஜினாமா கடிதம் (2-அசல்கள்) இத்துடன் இணைத்து உரிய நடவடிக்கைக்காக சமர்ப்பிக்கப்படுகிறது.

இணைப்பு-16 தாள்கள் (8 X 2- அசல்கள்.

ஒப்பம்/-

வட்டார மருத்துவ அலுவலர்,
அரசு ஆரம்ப சுகாதார நிலையம்
சாயல்குடி”

5. Despite the said development, the resignation has not been accepted, nor the certificates, mentioned in the aforesaid prayer, pending with the first and second respondents are not returned back to the petitioner, with the result that, the petitioner is not able to join the allotted Institution till date for the admission to P.G.course, for which he has been selected. Therefore, in this regard, he has given a latest representation also to the second respondent on 18.08.2020 and the same also since has not been considered, the petitioner is before this Court with the aforesaid prayer.

6. Heard Mr.K.Jayamohan, learned counsel appearing on behalf of Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader appearing for the respondents 1 to 4.

7. Mr.K.Mu.Muthu, learned Additional Government Pleader appearing for the official respondents would submit that, in the very appointment order itself, the following conditions have been imposed against the petitioner.

“The individual should serve in Government for a period of not less than three years excluding any period spent on training, leave or higher education. Also, the individual should abide by the condition that after joining duty he /she will not be permitted to undergo Post Graduate course within the period of two years, excluding the period of leave” .

8. By relying upon the said conditions, the learned Additional Government Pleader would submit that, within two years period, the petitioner would not be permitted to go for any P.G. Medical course and therefore, in the pretext of joining in the P.G. Course, the petitioner cannot seek for the certificates referred to in the prayer and leave from the job, where he is working. He would also submit that, since the petitioner is working in the Rural Health Centre in a remote area and during the COVID-19 period, basic medical facilities are to be given to the needy people in the rural area and only for the said purpose, the Government established various rural health care centres, like the Primary Health Care Centre in rural areas and accordingly, these Doctors were appointed to serve the needy people in that locality.

9. When that being the position, due to COVID-19 situation, since the Government is already struggling for want of more doctors and if the existing Doctors are leaving, by citing one reason or other, that would further aggravate the situation. Therefore, for the said reason also, the prayer sought for by the petitioner, to issue back the certificates required for admission into the P.G Medical course cannot be accepted.

10. I have considered the submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

11. No doubt, now, we are passing through very difficult period in our life time, where, not only our country, but the whole world, is struggling against the COVID-19

pandemic situation, where, the Doctors in the medical field, supporting staff and paramedical staff are in the forefront in the fight against COVID-19.

12. No doubt, the petitioner is a Doctor, who has been recently appointed and he is working in a rural area of the State. Therefore, his services is required for the betterment of the rural and needy people in that locality.

13. But at the same time, in the field of Medicine, we need more qualified people with updation, that alone will help the Society at large, as they can bring so much laurels in the field of Medicine for the benefit of humanity.

14. Moreover, if a Doctor with U.G. qualification is getting a chance to go for higher course like P.G. Medical Course or subsequently Super Speciality course, for which, after great struggle, by participating in the competitive exam, once the Doctor is able to get admission in P.G. Medical course, or any other higher Speciality course, that kind of chance cannot be thwarted by anyone including the Government / Employer.

15. Therefore, in these context, we have to balance both sides, as in one side, the Government needs more Doctors to serve the Society at large in a better way and on the other side, the Doctors have to equip themselves by acquiring more and more qualification.

16. Here in the case in hand, the petitioner has decided to resign his job and accordingly, he has given his resignation letter and the same also having been forwarded to the third respondent by the second respondent for necessary action.

17. Once the petitioner decided to quit his job for the purpose of joining P.G Medical course, this Court feels that the Employer (i.e.) the respondents have no right to withhold his services by citing the reasons of COVID-19.

18. Moreover, once the petitioner has been selected in the P.G. Medical course, and within a time frame as fixed by the Selection Authority, unless and until the petitioner reports to the Institution, where he has been selected and going to be admitted, he may be in a position to lose the chance of getting admission, that will be a irreparable loss on the part of the petitioner, which will not be easily compensated.

19. Realizing that only, the petitioner has gone to the extent of deciding to quit his job and that is why, he has tendered his resignation. Therefore, this Court feels that the said contention raised by the learned Additional Government Pleader appearing for the respondents, by citing COVID-19 situation, certainly may not outweigh the situation faced by the petitioner and therefore, balancing both, this Court feels that, the petitioner can be permitted to join in the P.G. Medical course, for which, he may be enabled to get the certificates by accepting his resignation.

20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

“(i) the second respondent is hereby directed to accept the resignation submitted by the petitioner dated 28.07.2020, to the third respondent, which was forwarded to the first respondent, on 29.07.2020, who in turn would forward the same immediately to the 2nd respondent, if not already forwarded and at the same time, return back all the original certificates such as SSLC, HSC, CRRI Completion Certificate, Degree Certificate, MCI Registration Certificate, Community Certificate, Course cum Conduct Certificate to the petitioner forthwith, enabling him to join in the P.G. Medical Course as per the allotment order given by the fourth respondent / National Board of Examinations, dated 17.08.2020 and the needful as indicated above shall be immediately undertaken without any further loss of time, by the respondents; and

(ii) In view of the above, the fifth respondent is directed to keep one seat of Post Graduate in DNB General Surgery (Broad Speciality) Course vacant, for a period of one week enabling the petitioner to submit the certificates, pursuant to the direction issued above.”

21. With these directions and observations, the Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.9153 of 2020 stands closed.

28.08.2020

**Note: Issue Order Copy
Today (28.08.2020)**

Index : Yes
Internet : Yes

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

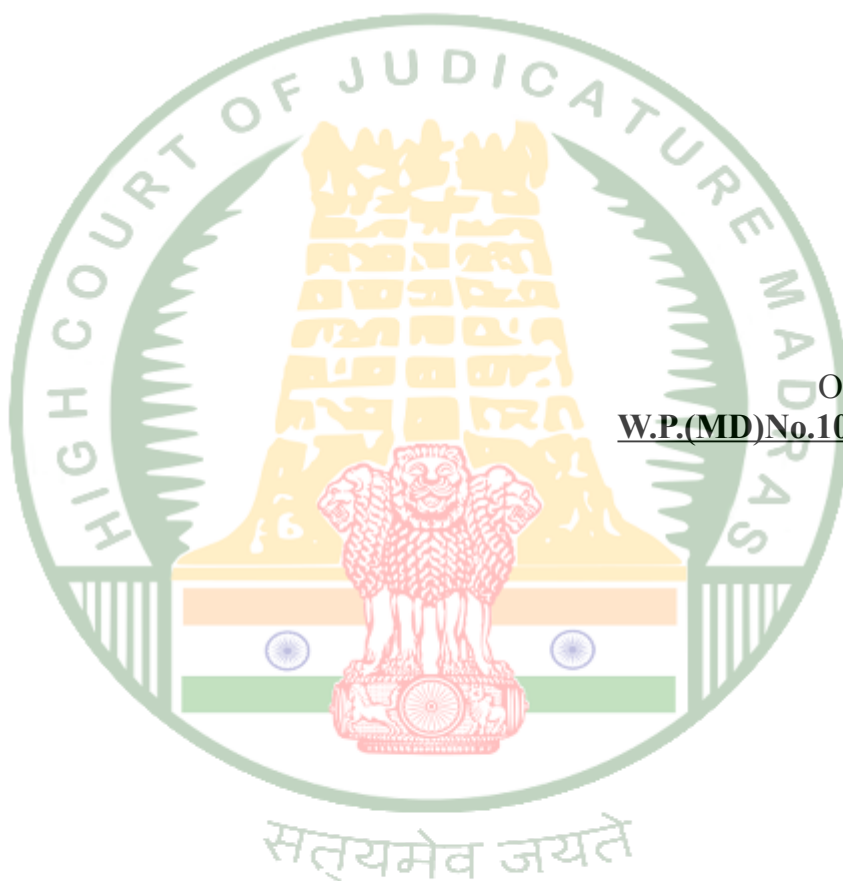
To:

- 1) The Deputy Director of Health Services,
Paramakudi, Ramanathapuram District.
- 2) The Director of Public Health,
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W.P.(MD) No.10275 of 2020

R.SURESH KUMAR, J.

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Order made in
W.P.(MD)No.10275 of 2020

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Dated:
28.08.2020