

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) D.B. Special Appeal Writ No. 1311/2022

The State Of Rajasthan

-----Appellant

Versus

Dr. Nishant Gopaal S/o Shri Ajai Gopal

-----Respondent

And

(2) D.B. Special Appeal (Writ) No. 1330/2022

The State Of Rajasthan & Others.

-----Appellants

Versus

Dr. Shubham Jain & Others.

-----Respondents

(3) D.B. Special Appeal (Writ) No. 1318/2022

The State Of Rajasthan & Others.

-----Appellants

Versus

Dr. Anurag Bhakhar

-----Respondent

(4) D.B. Special Appeal (Writ) No. 1319/2022

The State Of Rajasthan & Others.

-----Appellants

Versus

Dr. Beena Sen & Others

-----Respondents

(5) D.B. Special Appeal (Writ) No. 1320/2022

The State Of Rajasthan & Others.

-----Appellants

Versus

Dr. Krishnapriya S. Kumar & Others.

-----Respondents

(6) D.B. Special Appeal (Writ) No. 1321/2022

The State Of Rajasthan & Others.

-----Appellants

Versus

Dr. Tahsim Anwar & Others.

-----Respondents

For Appellant(s)	:	Mr. M.S. Singhvi, Advocate General with Mr. Darsh Pareek Advocate & Mr. Tarang Gupta Advocate.
For Respondent(s)	:	Mr. Rajendra Prasad, Senior Advocate with Mr. Kushagra Sharma Advocate, Abhishek Singh Advocate & Ms. Purvi Mathur Advocate.

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE SAMEER JAIN

Order**09/12/2022**

Heard on prayer for stay.

Learned Advocate General would argue that the direction given in the operative part of the impugned order, as contained in the impugned order, suffers from self contradiction inasmuch as having upheld the validity of the Notification dated 04.08.2022, a declaration that subsequent Notification dated 04.08.2022 is not approved by the Court, is not at all justified. Learned Advocate General would submit that the learned Single Judge has failed to properly appreciate specific ground based on legal submission that no writ of mandamus could be issued in favour of the writ petitioners in the absence of there being any legally enforceable right in favour of the writ petitioners or a corresponding statutory or public duty on the appellant-State. He would submit that as a matter of public policy, the State while granting admission to writ petitioners in PG Courses required them to execute a service

bond/undertaking in favour of the State that after completion of course, they are bound to serve the Government for a minimum stipulated period if desired and on such failure, the writ petitioners would be liable to deposit a penalty of stipulated amount. Such a public policy of requiring the PG students to execute service bond/undertaking of service and upon failure, to pay penalty has been approved by the Hon'ble Supreme Court in the case of **Association of Medical Superspecialty Aspirants and Residents and Others Versus Union of India and Others, (2019) 8 Supreme Court Cases 607**. In order to ensure that peoples' right to receive health services is fulfilled, in terms of the bond, process for appointment of PG students was initiated strictly in accordance with the scheme of appointment. It was within the domain of jurisdiction of the State to lay down appropriate procedure consistent with fairness, which was done. He would submit that the terms and conditions as embodied in order dated 12.07.2022 and procedure as notified in Notification dated 04.08.2022 was duly complied with. Only on the basis that walk-in interview was introduced, which was only to facilitate the process of appointment in all the institutions in a time bound manner, the process of selection could not be held as illegal on the ground that it was not in accordance with order dated 12.07.2022.

The next submission is that during the pendency of the petition, the State, in order to resolve the dispute and ensure timely appointment on vacant post in the medical colleges and in health services, issued an order dated 27.09.2022 whereby, the decision was taken to take the services of the candidates, who had completed their Post Graduation studies under the service bond to be known as 'Post Graduate Medical Consultant' and to be

employed on contract basis on fixed monthly remuneration. Learned Single Judge while deciding the issue, having not disapproved the order dated 27.09.2022, there was no occasion to direct de novo exercise of appointment.

The other submission of learned Advocate General is that the finding of the learned Single Judge that retention of original documents of the writ petitioners was not permissible, has been recorded without due consideration of specific findings recorded by the Hon'ble Supreme Court in the case of **Association of Medical Superspeciality Aspirants and Residents and Others Versus Union of India and Others (Supra)**. In his submission, the learned Single Judge has failed to appreciate that condition of retaining documents was an implied condition of contract entered into between the writ petitioners and the State in the shape of bond. It was an ancillary condition, which will be presumed to exist in every contract to make the contract effective. If the documents are allowed to be returned, the very purpose of getting the bonds executed would be frustrated as the writ petitioners may anytime walk out of their undertaking to serve after having taken PG studies without depositing the forfeiture amount under the bond. He would submit that the State would be making appointment of the PG students, who so far have not been appointed, strictly as per the orders issued from time to time, including order dated 27.09.2022 by constituting services known as 'Post Graduate Medical Consultant' who would be employed on contract basis on fixed monthly remuneration, which has not been disapproved by the learned Single Judge.

On the other hand, learned Senior counsel appearing for the respondents opposing the prayer for interim relief would submit

that the learned Single Judge after taking into consideration the pleadings of the parties and particularly the terms and conditions of the bond read with order dated 12.07.2022 found that the appellant-State-Authorities, instead of making appointments on the basis of the rank/merit option of the candidates in NEET PG Examination, acting in utter disregard to the merit based selection/appointment, allowed walk-in interview method, which was not permissible under the order dated 12.07.2022. It is submitted that walk-in interview method was against the order dated 12.07.2022.

He would next submit that the State's offer of appointment by constituting a separate service on fixed remuneration on contract basis goes against the spirit of the terms and conditions of the bond as also order dated 12.07.2022 and Notification dated 04.08.2022.

On the issue relating to the retention of the original documents of the writ petitioners, it is argued that neither in the bond, nor in any other undertaking of the writ petitioners, nor under any law, such an action of the State is permissible. He would submit that retention of the original documents as an arm twisting mechanism to ensure deposit of forfeiture amount under the bond, is impermissible in law. He would submit that the writ petitioners have never refused or denied that they will not serve, but occasion to challenge the process of appointment arose when the State Authorities, instead of strictly following merit based formula as contained in order dated 12.07.2022, allowed appointments on the basis of walk-in interview by candidates in institutions of their choice without adherence to the merit aspect, that they were compelled to file writ petitions and once the

selections are held in accordance with the order dated 12.07.2022 and Notification dated 04.08.2022, there is no question of writ petitioners not accepting those appointments and serving. He would submit that in any case, failure on the part of the writ petitioners to accept offer of appointment would entail deposit of forfeiture amount under the bond but for that purpose, the State cannot adopt mechanism, which is unknown to law. He would also submit that in the case of **Association of Medical Superspeciality Aspirants and Residents and Others Versus Union of India and Others (Supra)**, the issue with regard to retention of original documents was not decided and, therefore, the aforesaid decision is not an authority for the proposition that until the amount of forfeiture under the bond is deposited, retention of documents would be justified. Learned Single Judge, it is argued, taking into consideration that neither in the bond, nor anywhere else any such condition was imposed and also taking into consideration the views taken by the different High Courts, has issued direction for returning of documents.

We have heard learned counsel for the parties for the limited purposes of consideration whether the direction issued by the learned Single Judge needs to be stayed at this stage or requires issuance of any other direction as an interim measure so as to ensure and serve larger public purpose of availability of doctors in the medical colleges and hospitals.

On *prima-facie* consideration, we find that the bond executed by the PG students requires them to serve for a minimum period of five years, which has now been reduced to two years with an exit clause that in the event they do not serve for a period of two

years, a forfeiture amount of Rs.10,00,000/-, as it now stands, will have to be paid.

Such a scheme of taking bond, from the students who have been granted admission in PG courses was considered by the Hon'ble Supreme Court in the case of **Association of Medical Superspeciality Aspirants and Residents and Others Versus Union of India and Others (Supra)**, and on public domain consideration, such a scheme was approved, relying upon its earlier decision, upholding that the amount of fees charged from the students is meagre in comparison to the private medical colleges and reasonable stipend has to be paid to the doctors. It was further held that the State Governments have taken into account the need to provide healthcare to the people and the scarcity of superspecialists in their states. On such considerations, policy decision taken by the State Governments to utilise the services of doctors who are beneficiaries of State Government assistance to complete their education was held to be not an arbitrary condition. The Hon'ble Supreme Court also issued direction to consider imposing the condition of compulsory service period of two years in default of which doctors shall recompense the Government by paying Rs.10,00,000/-. It was also held that the PG students having accepted the admission without any protest and executed compulsory bonds, no exception could be taken to such a mechanism as the execution of bonds is part of a comprehensive package. It was held that the Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life and failure on the part of Government hospitals to provide medical treatment to a person in need of such

treatment would result in violation of his right guaranteed under Article 21 of the Constitution of India.

Therefore, the scheme of execution of bond by taking undertaking to serve for a minimum stipulated period and on failure to deposit the forfeiture amount under the bond is a condition which is binding on the PG candidates. However, at the same time, as the bond does not contain detailed process through which the appointments have to be made, the process of appointment, terms and conditions thereof, may be laid down by the State though such terms and conditions must necessarily confirm to fairness and appointment through procedure known to Article 14 of the Constitution of India.

Moreover, the object and purpose of such appointment is to advance public cause of providing proper health services by engaging superspecialists, in the matter of such appointment, merit has to be kept in mind. Any procedure which undermines and destroys merit based consideration, would necessarily be against the laudable purpose for which the scheme of obtaining a bond and taking undertaking from PG candidates to serve for minimum two years has been taken and the very object and purpose would be defeated.

Learned Single Judge has bestowed its consideration and examination of the procedure of selection. Apparently, the procedure of appointment through walk-in interview was neither expressed, nor implied under order dated 12.07.2022 or Notification dated 04.08.2022. Moreover, assuming that such a power was available to the State to evolve its own procedure, it has to be consistent with principle of consideration based on merit. On such detailed consideration, learned Single Judge came

to the conclusion that such a procedure of selection in deviation of its order dated 12.07.2022 and Notification dated 04.08.2022 was illegal and impermissible, which has led to issuance of various directions.

The submission of learned Advocate General that though the State had come out with the scheme of appointment as per order dated 27.09.2022, that having not been disapproved, the direction for de novo exercise was not warranted, does not appeal to us to stay, in entirety, the direction as given by the learned Single Judge. The order dated 12.07.2022 clearly states the details of posts against which appointments would be made. Though, learned Single Judge has held that the writ petitioners' claim of appointment commensurate to their qualification, is not acceptable, nevertheless, the appointments are required to be made as per Circular dated 12.07.2022. The scheme under order dated 27.09.2022 is altogether a different one which may be resorted to by the State in the eventuality when even after completing exercise of appointments vide order dated 12.07.2022, posts remained unfilled. Those, who are higher in order of merit on the basis of NEET cannot be denied appointment against the post and on the terms and conditions under order dated 12.07.2022 merely because an alternative scheme has been evolved by the State on 27.09.2022.

The submission of learned Advocate General to support the action of retention of original documents on the basis of the judgment of the Hon'ble Supreme Court in the case of **Association of Medical Superspeciality Aspirants and Residents and Others Versus Union of India and Others (Supra)**, *prima-facie*, does not appeal to us because in that case,

we do not find any finding recorded by the Hon'ble Supreme Court that retention of original documents until payment of the forfeiture amount would be justified. Learned Single Judge was persuaded by the views taken by the Madras High Court in the case of **Dr. N. Karthikeyan & Ors. Vs. State of Tamil Nadu & Ors., in W. P. No.28526/2021**, decided on 19.01.2022. In this regard, various decisions relied upon by the State, particularly in **Laxminarain Vs. State and Others, 1982 WLN (UC) 305**, relating to conduct of the party claiming relief under Article 226 of the Constitution of India and another decision in the case of **R. S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another and Connected Appeals, (1977) 4 Supreme Court Cases 98** and other decision relied upon in support of the contention that the retention of documents was implied condition and it was incidental to ensure proper doing of particular thing has been taken into consideration.

At this stage, we are of the view that the writ petitioners, who have sought to invoke the equitable and discretionary jurisdiction of the Court, are required to come to the Court with clean hands. The Contentious issues raised by the learned Advocate General in this regard appears to be quite arguable and requires serious consideration.

On the aforesaid *prima-facie* considerations on the basis of the arguments of learned counsel for the parties, while we are not inclined to stay the directions, which have been issued by the learned Single Judge in the matter, however, as far as return of documents is concerned, it is directed that on writ petitioners submitting an undertaking on affidavit before this Court that if they are not inclined to accept appointment offered to them, they

will deposit the amount payable under the bond and on submission of an affidavit before the concerned authority regarding filing of undertaking before this Court along with copy of the undertaking, the documents/credentials/certificates/mark-sheets shall be returned to the respondents.

As soon as the process of selection & offer of appointment upon completion of exercise undertaken in compliance of the directions of the learned Single Judge is completed, the parties would be at liberty to mention the case for further consideration. Those who have already been appointed, shall, however, continue till new appointments take place and the candidates, upon offer of appointment after de novo exercise, accept and join.

List these appeals in the month of January, 2023 with liberty to the parties to seek early hearing.

A copy of this order be placed on record of each appeal.

(SAMEER JAIN),J

(MANINDRA MOHAN SHRIVASTAVA),J

Sanjay Kumawat-59, 13 & 93 to 96

