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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 20th OF SEPTEMBER, 2022

WRIT APPEAL No. 757 of 2020

BETWEEN:-

RUXMANIBEN DEEPCHAND GARDI MEDICAL COLLEGE (A UNIT OF UJJAIN CHARITABLE TRUST HOSPITAL AND RESEARCH THROUGH ITS DEAN DR. M.K. RATHORE S/O SHRI M.M. RATHORE, SURASA, AGAR ROAD, UJJAIN (MADHYA PRADESH)

.....APPELLANT

(SHRI AJAY KUMAR ASSUDANI, LEARNED COUNSEL FOR THE APPELLANT).

AND

1. DR. ANSHUL JAIN D/O DR. VIMAL JAIN, AGED ABOUT 31 YEARS, OCCUPATION: DOCTOR BIDWA COLONY, NEAR NARMADA VALLEY, BARELI RAISEN (MADHYA PRADESH)

2. STATE OF M.P. THR SECRETARY DEPARTMENT OF MEDICAL EDUCATION MANTRALAYA, VALLBHA BHAVAN (MADHYA PRADESH)

3. DIRECTOR, DIRECTORATE OF MEDICAL EDUCATION, DEPARTMENT OF MEDICAL EDUCATION VITH FLOOR, SATPUDA BHAWAN, BHOPAL, (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SANJAY JAMINDAR, LEARNED COUNSEL FOR THE RESPONDENT [R-1].

(SHRI BHASKAR AGRAWAL APPEARED FOR RESPONDENT/STATE.)

*This appeal coming on for orders this day, **JUSTICE VIVEK RUSIA** passed the following:*

ORDER

By way of this Writ Appeal, the appellant/ (respondent No.3 in Writ Petition) is assailing the order dated 13.05.2020 passed in Writ Petition No.7982/2019 whereby the Writ Court has allowed the Writ Petition filed by the respondent No.1 (hereinafter referred to as " Writ Petitioner") by directing the appellant to refund Rs.5,00,000/- to writ petitioner within a period of 30 days.

Brief facts of the case:-

[2] The writ petitioner took admission in Post Graduate Degree in Doctor of Medicine in Anesthesiology in the college of the appellant. After admission vide office order dated 01.08.2014, the Writ Petitioner was appointed as Junior Resident in the department of Anesthesiology w.e.f. 02.08.2014 on fixed salary of Rs. 30,000-1,000- 32,000. An affidavit was taken from Writ Petitioner on 06.08.2014 infact a declaration to the effect that apart from other conditions, she shall work as Senior Resident/Demonstrator for atleast one year after passing Post Graduation for which she would be paid Rs.40,000/- per month and if she is unable to join the services, she would pay Rs.5,00,000/- in lieu of the services. A declaration has also been obtained to the effect that unless she fulfils the conditions, she would not be given any original documents, nor passing certificate or relieving certificate etc.

[3] After passing the Post Graduate Degree in Anesthesiology, the Writ Petitioner sought reliving certificate as well as original documents from the appellant but as per the condition of affidavit, she had to give a demand draft of Rs. 5,00,000/- to the appellant. After receipt of the draft, she was provided with all the necessary documents belonging to her and she was not compelled to do the job of Senior Resident/Demonstrator.

[4] In the year, 2019, she filed Writ Petition that the action of the appellant withholding the original documents and compelling her to deposit Rs.5,00,000/- was wholly illegal and arbitrary. She was not bound to do the job as Senior Resident/Demonstrator or deposit Rs.5,00,000/- in lieu of non-serving as Senior Resident/Demonstrator, hence, she is entitled to a refund of Rs.5,00,000/- with interest.

[4] The appellant filed reply refuting that after passing the Post Graduate Degree in Anesthesiology, the Writ Petitioner was bound to serve as Senior Resident/Demonstrator in the institution for a period of one year. As per Rule 11 of M.P. Medical & Dental Post Graduate Courses (Degree/Diploma) Admission Rules, 2014, the selected candidate has to submit a bond of Rs.10.00 lacs for a postgraduate degree and Rs.8.00 lacs for a Diploma course for serving under the State Government for one year after completing P.G. Degree/Diploma Course. It is a common practice of doctors in the State of M.P. that after completing post graduate degree, they declined to work as Senior Resident in the institution, therefore, the State Government, as well as Private Institutions, takes bonds from them. The other States demand Rs. 50.00 lacs and the appellant has only demanded Rs. 5.00 lacs as compared to other State Government .

[5] The State Government has also filed the reply by submitting that clause 11 of Madhya Pradesh Medical and Dental Post Graduate Course Admission Rules (Degree/ Diploma), 2014 mandates furnishing of bonds only for working in Government Autonomous Medical Colleges. Rules, 2014 nowhere mandates submission of bond in the admission of P.G. Course. No relief has been claimed against the State Government.

[6] After hearing learned counsel for the parties, vide order

dated 13.05.2020, the Writ court has allowed the Writ Petition by directing the appellant to refund the number of Rs. 5,00,000/- to the writ petitioner within 30 days. Hence, the appellant is in Writ Appeal.

We have heard learned counsel for the parties and perused the documents as well as an impugned judgment passed by Writ Court.

[7] The Writ Petitioner was allotted a State quota seat for a Post Graduate degree in the subject of Anesthesiology in the appellant's college. The Writ Petitioner deposited the entire fees demanded by the appellant. Thereafter, the appellant vide office order dated 01.08.2014, appointed her as Junior Resident in the department of Anesthesiology on terms and conditions mentioned in the order. Simultaneously, an affidavit has already been obtained from the Writ Petitioner. Clause 6 of the affidavit which is the main controversy in this case, is reproduced below:-

"6. If desired by the institution I solemnly affirm that I shall work as senior resident/demonstrator for atleast one year after passing my Post Graduation for which I will be paid a salary of Rs.40,000 per month. If I am not able to join this service I shall pay Rs. Five Lacs to the institution in lieu of the service. I hereby agree that unless I fulfill the above conditions I will neither be eligible to receive any of my original document nor I will be eligible to receive my passing certificate and reliving certificate. In case of default, I hereby jointly and separately agree that the institution will have the right to recover the said amount from the movable and immovable properties of the undersigned."

[8] Since the Writ Petitioner was given admission to the College of the appellant, she had no option but to give an affidavit as demanded by the appellant. Although in the Rules, 2014, there is no such requirement for giving an affidavit as well as a bond by the Writ Petitioner. It is clear from clause No.6 of the affidavit that *if desired by the institution*, the Writ Petitioner shall work as Senior Resident for at least one year and if she is not able to join

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the services, she shall pay Rs. 5,00,000/- to the institution in lieu of service. After passing the P.G.degree, the appellant did not issue any appointment to the the writ petitioner to work as Senior Resident as when she was appointed as Junior Resident at the time of admission. The appellant has not produced any appointment order of the writ petitioner, therefore, there is no question to the writ petitioner to wait for the issuance of the appointment order. Had the appellant desired the writ petitioner to work as Senior Resident, they would have issued an appointment order. Since there is no appointment order, therefore, it cannot be said that the Writ Petitioner was liable to pay Rs.5,00,000/- to the institution in lieu of service. Since the appellant had all the original documents of the Writ Petitioner, therefore, they could be compelled to the Writ Petitioner to deposit Rs. 5,00,000/- before releasing the original documents. The Writ petitioner who was getting a better job had no option but to deposit Rs. 5,00,000/- then only the documents were released, thus the Writ Court has rightly held that the action of the appellant demanding Rs.5,00,000/- as a condition for release the original documents and certificate is unsustainable in law. The Writ Court has rightly directed the appellant to refund Rs. 5,00,000/- to Writ Petitioner within 30 days failing which same shall carry interest @ 8% from the date of deposit till date of receipt by the writ petitioner.

[9] The Writ Appeal sans merit hence liable to be dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE