

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 14TH DAY OF DECEMBER 2018/23RD AGRAHAYANA, 1940

OP(KAT).No. 400 of 2018

AGAINST THE ORDER DATED 05-10-2018 IN O.A.NO.349/2018 OF KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS IN O.A.:

- 1 THE DIRECTOR OF INSURANCE MEDICAL SERVICES
THYCAUD, THIRUVANANTHAPURAM - 695 014, KERALA.
- 2 THE DIRECTOR OF HEALTH SERVICES,
VANCHIYOOR P.O.,
THIRUVANANTHAPURAM-695 035, KERALA.
- 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
HEALTH & FAMILY WELFARE(S) DEPARTMENT,
THIRUVANANTHAPURAM, KERALA-695 001.

BY SRI.C.P.SUDHAKARA PRASAD, ADVOCATE GENERAL
SMT.M.R.SREELATHA, SENIOR GOVT.PLEADER

RESPONDENT/APPLICANT IN O.A.:

DR. PRAVEEN V.,
AGED 45 YEARS, S/O. VISWANATHAN NAIR,
ASSISTANT INSURANCE MEDICAL OFFICER,
ESI HOSPITAL, VADAVATHOOR, KOTTAYAM - 686 001,
RESIDING AT VISWAMANGALAM VTRA 57, VELLANAD P.O.,
THIRUVANANTHAPURAM, KERALA - 695 543.

BY ADVS.
SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN

THIS OP(KAT) HAVING BEEN FINALLY HEARD ON 12.12.2018, THE COURT ON
14.12.2018 DELIVERED THE FOLLOWING:

“C.R.”

Judgment

Chitambaresh, J.

1. Employees State Insurance Scheme is a multidimensional social security scheme for workers in the organised sector in India. Medical care under this scheme is implemented in the State of Kerala through the Insurance Medical Services. The same formed on 1.4.1985 falls under the administrative control of the Labour Department of the Government of Kerala.
2. The respondent – an Assistant Insurance Medical Officer in the Insurance Medical Services – secured admission for the Post Graduate Course in M.D.(Pulmonary Medicine) in the quota earmarked. Two seats had been reserved for the in-service candidates of Insurance Medical Services and the respondent successfully completed the course during the period 2014–17. The

respondent had in the meanwhile been advised for appointment as Assistant Surgeon in the Health Services Department and he applied for extension of time to join. The respondent reported for duty in the Insurance Medical Services and prayed to relieve him from service to enter the Health Services Department. The request was turned down by Annexure A9 communication of the Director of Insurance Medical Services on the ground that the respondent has a bonded obligation to continue.

3. The Director of the Insurance Medical Services was firm on his stand based on Annexure A12 prospectus for admission to Post Graduate Degree Course and Annexure A10 bond executed by the respondent. The bond obliging the respondent to serve the Insurance Medical Services was in tune with Ext.P5 order as modified by Ext.P6 order of the Government. The reluctance on the part of the Director of the Insurance Medical Services to relieve the

respondent from duty led to the filing of O.A.(EKM) No.349/2018.

The Kerala Administrative Tribunal has by the order impugned held that the obligation of the respondent is to serve the Government and not exactly in the Insurance Medical Services. The Directors of the Insurance Medical Services and Health Services as well as the State of Kerala have filed this original petition arraying the respondent as a party.

4. We heard Mr. C.P.Sudhakara Prasad, Advocate General assisted by Mrs. M.R.Sreelatha, Senior Government Pleader as well as Mr. P.Ravindran, Senior Advocate appearing for the respondent.

5. The respondent secured admission in the Insurance Medical Service quota on the strength of Clause 7-7 of Annexure A12 prospectus which is extracted below for easy reference:

“7-7. Insurance Medical Service Quota (IMSQ)

Seats as specified in Annexure III and IV will be reserved for Medical Officers working in Insurance Medical Service Department. Selection to the seat under IMSQ will be based on the list provided by the Director of Insurance Medical Services. The selected candidates shall submit a declaration to the effect that they will serve Insurance Medical Services Department in the specialist post immediately or as and when required by the Government, on successfully completing the course and on posting orders against the posts given by the Director of Insurance Medical Services.”

(emphasis supplied)

The Government of Kerala has also in modification of Ext.P5 order issued Ext.P6 order as regards deputation benefit to Medical Officers to secure admission to higher studies on departmental quota. Ext.P6 order specifically refers to a letter from the Director of Insurance Medical Services to incorporate terms in tune with the prospectus and the modification is as follows:

“The Medical Officers should execute a bond to

serve the Insurance Medical Services Department for the minimum obligatory period prescribed as per the prospectus for admission to P.G.Courses issued by the Director of Medical Education at the time of admission.”(emphasis supplied)

6.It was in accordance with Annexure A12 prospectus and Ext.P6 order did the respondent execute Annexure A10 bond binding himself to serve the Insurance Medical Services and its relevant clauses are extracted below:

“AND WHEREAS the Government have agreed to pay the bounden during the period of the said course of study his/her pay and allowances which he would have drawn but for his undergoing the said course of study and to treat the period of the course of study as duty.

AND WHEREAS the Government have agreed to incur the said expenses on condition that after

successful completion of the course of study within the prescribed period of the bounden shall serve the Insurance Medical Services Department for a period of 10 or 12 or till superannuation whichever is earlier and also subject to the terms and conditions hereinafter appearing and the bounden and the sureties have agreed to the same.

NOW the condition of the above written obligation is that in the event of the Bounden after successful completion of the Postgraduate course of study to which he was selected fails to serve the Insurance Medical Services Department for a period of 10 years or superannuation whichever is earlier the bounden and sureties shall forthwith pay to the Government on demand the sum of Rs.1890648/- (the total amount of salary/stipend drawn during the period of study) together with Rs.20,00,000/- as liquidated damages. In the matter of deciding what moneys are to be paid by the Bounden and the sureties and decision of the

Government shall be final and legally binding on the bounden and the sureties and upon the payment of such sum the above written obligation shall be void and of no effect otherwise this shall be remain in full force and effect.

Provided further that the bounden and the sureties do hereby agree that if the bounden fails to serve the Insurance Medical Services Department for a period of ten or twelve or till superannuation whichever is earlier, it may be construed as professional misconduct and the fact reported to the T.C.Medical Council for suitable action including cancellation of registration by the council.” (emphasis supplied)

Ext.P4 order of the Government is also specific that deputation benefits were sanctioned to the respondent 'to undergo P.G.Course under Insurance Medical Services quota subject to the terms' in Exts.P5 and P6 orders.

7. The allocation of seats for in-service candidates in the Postgraduate Courses in Medicine is not violative of Article 14 of the Constitution of India (See **State of M.P. v. Gopal D. Tirthani** [(2003) 7 SCC 83]). The respondent would not have secured admission in M.D. (Pulmonary Medicine) but for the fact that there was a departmental quota for Insurance Medical Services. The respondent was accommodated in the quota earmarked and the Government undertook to pay the salary and allowances during the period of study. The respondent was sanctioned deputation benefits for undergoing the Post Graduate Course under the quota and the period treated as on duty subject to conditions. The specific terms are embodied in Annexure A12 prospectus and Annexure A10 bond executed in terms of Ext.P5 order as modified by Ext.P6 order of the Government. The same obliged the respondent to serve the Insurance Medical Services for a minimum period of 10 years or till superannuation after the successful completion of the course. The

respondent cannot be permitted to wriggle out of the obligation and slide to the Health Services Department on the ground that it is also under the Government. Insurance medical services are primarily meant to give medical aid to the employees covered by the Employees' State Insurance Act, 1948 which is a welfare legislation. It is with the object to obtain expertise for the doctors who treat such employees has the quota been earmarked for admission to the Post Graduate Courses. The respondent having secured admission in the quota for Insurance Medical Services cannot be permitted to switch over to the Health Services Department which is more lucrative.

8. It may at once be noticed that the respondent while on deputation for the Post Graduate Course was paid the salary and allowances not by the Health Services Department but by the Insurance Medical Services. The plea of the respondent evidenced by Annexure A7

representation to shift his bonded service to another department cannot be countenanced. Reliance was placed on Clause 13-1.(b) of Annexure A12 prospectus to contend that the respondent need serve the Government only and the same is extracted below:

“13-1.(b) In the case of Service Quota candidates, he/she shall serve the Government for a period of 10 years or up to superannuation whichever is earlier, after the completion of the course. Service candidates who get admission under service quota and have not completed the period of probation as on the day before the date of admission will have to serve the Government for an additional period of 2 years.”

Clause 13-1.(b) falls under the General Terms pertaining to liquidated damages and execution of bond and cannot be read in isolation to Clause 7-7 pertaining to Insurance Medical Service

Quota. The general clause has to yield to the special clause in Annexure A12 prospectus which undoubtedly casts an obligation on the respondent to serve the Insurance Medical Services only. It is not as if the respondent would ever be tied down to the Insurance Medical Services on bonded slavery and there is a way to exit from the Department. The honourable way is to pay the liquidated damages fixed by the Government by the respondent and get himself relieved from the Insurance Medical Services to join elsewhere. The Government in so doing can reckon the amount spent by it for the studies including the stipend/salary disbursed to the respondent during the period with interest thereon. This is in addition to the sum of ₹20,00,000/- payable by the respondent for not continuing in the Insurance Medical Services after the Post Graduate Course.

9.The respondent also relied on Annexures A14 and A15 orders

whereby candidates earlier working in the General Medicine Department were permitted to join the Medical Education Department after study. Such executive orders are not a precedent to be followed particularly in the wake of Annexure A12 prospectus, Ext.P6 order and Annexure A10 bond which operate. The Kerala Administrative Tribunal egregiously erred in holding that the bonded obligation of the respondent is to serve the Government in any department. The direction in the order impugned to relieve the respondent from the Insurance Medical Services to enable him to join the Health Services Department is unjustifiable. The further direction of the Kerala Administrative Tribunal to the Government to take a final decision in the matter after observing as above is bewildering. We set aside the impugned order without prejudice to the right of the Government to quantify the damages in case the respondent wishes to quit the Insurance Medical Services.

10. We conclude our judgment by quoting from **Dr.Ayisha Beegam and others v. State of Kerala and others** [2018(4) KLT 471(DB)] rendered in the context of the colleges retaining the certificates:

“Viewed differently, the doors are not shut on the students. They may serve the State and be paid or sever their relation and leave it; it comes at a price: paying liquidated damages. If the students leave for greener pastures, they must be prepared to pay, to compensate. **Medical profession – tough as it is and, perhaps, lucrative as it may be – is not all about money; it has still an element of service.**”

The original petition is allowed. No costs.

Sd/-

V. CHITAMBARESH, JUDGE

Sd/-

R. NARAYANA PISHARADI, JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE O.A.NO.349/2018 ALONG WITH ANNEXURES.
- EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST PETITIONER.
- EXHIBIT P3 TRUE COPY OF THE REJOINDER FILED BY THE RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 25.11.2015 ISSUED BY THE GOVERNMENT SANCTIONING DEPUTATION BENEFIT TO THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF G.O. (MS) 140/99/LBR DATED 17.11.1999.
- EXHIBIT P6 TRUE COPY OF G.O. (MS) 96/08/LBR DATED 10.07.2008.
- EXHIBIT P7 TRUE COPY OF THE ORDER IN O.A. (EKM) 349/2018 DATED 05.10.2018.