

(2016) 03 MAD CK 0157

In the Madras High Court

Case No : Writ Petition No. 26615 of 2015 and M.P. No. 1 of 2015

Ramanathan Ram Kumar and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21

Citation : (2016) 3 MLJ 446

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; N. Vijayabaskar, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—1. The petitioners are post Graduates in Medicine and are undergoing Super Speciality or Board Speciality Courses as the case may be in Southern Railway Head Quarters Hospital, Perambur, Chennai as Trainees from the year 2015-2016. They have come forward with this writ petition seeking for issuance of a Mandamus to restrain the respondents 3 to 7 from giving effect to the revised fee structure and stipend guidelines prescribed by the National Board of Examinations and adopted by the Railway Board as contained in the Letter of the fourth respondent dated 31.10.2014 and the consequent circular issued by the seventh respondent dated 27.11.2014.

2. In the affidavit filed in support of the writ petition, it is contended by the petitioners that the Government of India established the National Board of Examinations during the year 1975 with the object of improving quality of Medical Education. The Board conducts Post Graduate and Post Doctoral Examinations in approved specialities leading to award of Diploma in National Board. The diploma qualification awarded by the National Board of Examinations are equated with Post Graduate and Post Doctoral degrees for getting qualified for teaching posts. The National Board of Examination conducts centralized

entrance tests for admission to Super-speciality and Board Speciality Courses and the selected candidates are allotted to the teaching hospitals for undergoing the courses after the completion of the course. According to the petitioners, they are students undergoing super speciality or Board speciality courses in Southern Railway Head Quarters Hospital, Perambur pursuant to the Centralized All India Entrance Examinations conducted by the National Board of Examination and on the basis of the same, they were admitted in the Southern Railway Head Quarters Hospital, Perambur, during 2015- 2016.

3. The grievance of the petitioners is that on 31.10.2014, a communication had been sent to the Railway Hospital and other authorities stating that the competent authority in the Ministry of Railways has decided to adopt the modified fee and stipend guidelines for DNB trainees. The proceedings of the National Board of Examination dated 26.12.2013 was annexed to the said communication as per which minimum permissible limit of fee structure has been prescribed. As per the communication, the accredited institutions are at liberty to charge fees which is less than the fees indicated under the respective categories and the fee cannot be higher than the amount fixed by the National Board of Examination. The proceedings dated 26.12.2013 also prescribes for basic stipend which is payable to the DNB trainees such as the petitioners. According to the petitioners, the first year Broad Speciality, Super Speciality and Post Graduate Students were hitherto paid Rs. 63,654/- as monthly stipend for the first year; Rs. 65,521/- for the second year and Rs. 68,446/- for the third year. This amount paid towards stipend is sought to be reduced drastically by the Railway Board under the revised norms to the extent that the first year trainees shall be paid Rs. 25,000/-, second year trainees be paid Rs. 27,000/- and the third year students will get Rs. 29,000/-. For DNB Super Speciality trainees, the stipend was sought to be reduced to Rs. 32,000/-, Rs. 34,000/- and Rs. 38,000/- in the first, second and third years of training respectively. According to the petitioners, the Railway Board has declared that the Doctors, who are DNB Trainees are full-fledged qualified Doctors to do full fledged service as Doctors and are available in the hospitals round the clock. Along with the residency, they also work towards obtaining specialist/super specialist qualification namely DNB, MB, MS etc., The payment in the form of stipend paid to the petitioners is for rendering full service as Doctors and not stipend. The Railway Board has clarified that DNB trainees are entitled to all allowances like other Doctors in the Government of India/ Railways. Further, all the teaching Hospitals under the Railway Board imparting same courses have not reduced or sought to reduce the stipend payable to the students. While so, the Southern Railway Head Quarters Hospital at Chennai alone is attempting to implement the revised guidelines issued by the National Board of Examinations by reducing the stipend payable to the students admitted to super speciality and DNB Board speciality courses. Earlier, challenging the above attempt on the part of the respondents, WP No. 32283 of 2014 was filed before this Court and this Court passed an interim order directing the respondents 5 to 7 not to reduce the stipend payable to the students admitted till

2014-2015. Thereafter, as against the sum of Rs. 20,000/- paid by the petitioners as tuition fee, they were made to pay Rs. 80,000/- which was not in vogue in other hospitals. Thus, the collection of tuition fee and the consequential attempt on the part of the respondents to reduce the quantum of stipend is discriminatory and arbitrary.

4. The learned counsel for the petitioners vehemently contend that all the other teaching hospitals under the Railway Board imparting same course continue to pay the pre-existing stipend and not reduced the same. However, the Southern Railway Head Quarters Hospital, Chennai alone is adopting a different strategy and it amounts to discrimination. By virtue of the act of the respondents, the fundamental rights guaranteed to the petitioners under Article 14 and 21 of the Constitution are infringed. The respondents did not follow a uniform procedure in the matter of collection of tuition fee and the consequential payment of stipend. Therefore, the learned counsel appearing for the petitioners prayed this Court to restrain the respondents 3 to 7 from implementing the revised fee structure and stipend guidelines prescribed by the National Board of Examinations and adopted by the Railway Board as contained in the Letter of the fourth respondent dated 31.10.2014 and the consequent circular issued by the seventh respondent dated 27.11.2014.

5. Per contra, the learned counsel appearing for the respondents 3 to 7, relying on the counter affidavit filed by the fifth respondent, would contend that the admission to Diploma of National Board (DNB) Post Graduate Course is equivalent to MD/MS approved by the Medical Council of India and admission to such courses in various hospitals all over the country is regulated by National Board of Examination, which is the regulatory body functioning under the Ministry of Health and Family Welfare. The candidates admitted to such courses have to pay annual fee as determined by the National Board of Examination and they are also paid stipend/emoluments as determined by the Board. It is further contended that Southern Railway Head Quarters Hospital, Chennai is one of the accredited hospitals by National Board of Examination for conducting DNB courses in 9 different specialities and super-specialities in Northern, Eastern, South Eastern, Western Central and South Central Railway. To ensure uniformity in the selection and admission to the courses, the Ministry of Railways (Railway Board) lays down norms for payment of annual fee and emoluments to students pursuing DNB Courses and it is being followed in all the hospitals. In this context, the Railway Board issued a circular dated 31.10.2014 based on the guidelines issued by National Board of Examinations on 26.12.2013 regarding collection of tuition fee and payment of stipend. In compliance with such circular dated 31.10.2014, the seventh respondent issued a Circular dated 24.11.2014 to implement the modified annual fee for respective DNB Candidates in Railway Hospital, Perambur. The respondents 3 to 7 have no role in determining the fee structure of emoluments and it is based on the policy decision taken by the Board. The petitioners are fully aware of the fact that their selection, payment of annual fee and stipend are determined only by the National Board of examination

and not by the respondents 3 to 7. The petitioners, without challenging the notice dated 26.12.2013 are estopped from filing the present writ petition for a Mandamus. Further, the petitioners appeared for P.G. Medical Course admission as per the notification dated 26.12.2013 wherein it has been specifically mentioned about the stipend guidelines for DNB and FNB. Having accepted the same and other conditions, it is not open to the petitioners to file this writ petition. It is further stated that the contentions that other Zonal Railways are paying higher stipend cannot be a ground to seek the same amount of stipend to be paid to the petitioners. According to the counsel for the respondents, the other similar Hospitals are collecting higher fee amount and paying higher stipend, whereas, the respondents 3 to 7 do not collect huge amount as tuition fee and therefore they cannot be expected to pay stipend on par with other hospitals.

6. I heard the counsel for both sides and perused the materials placed on record. The only grievance of the petitioners is that the stipend amount hitherto paid to them by the respondents 3 to 7 is sought to be reduced without following any uniform procedure. It is also their grievance that they were made to pay higher tuition fee than what was collected by the respondents 3 to 7 earlier. It is the main grievance of the petitioners that the persons who are similarly placed like the petitioners in the other hospitals are continued to be paid the same stipend, however, the respondents 3 to 7 alone are attempting to reduce the stipend amount.

7. It is seen from the records that earlier, similar writ petition has been filed before this Court in WP No. 32383 of 2014 and by order dated 17.02.2015, this Court passed an interim order and directed the respondents to continue to pay the same stipend and the stipend amount shall not be reduced till the disposal of the writ petition. The said writ petition is pending adjudication. Now, the present writ petition has been filed by the petitioners, who are subsequent batch of students. When this Court granted interim stay with respect to the same issue as regards reduction of stipend amount payable to the trainees like the petitioners, the respondents are not justified in attempting to reduce, revise or modify the stipend amount.

8. In the counter affidavit, it is contended that the other similar Hospitals are collecting higher fee amount and paying higher stipend, whereas, the respondents 3 to 7 do not collect huge amount as tuition fee and therefore they cannot be expected to pay stipend. Such a contention cannot be countenanced for more than one reasons. First of all, the respondents have not come forward with any acceptable material to show what was the fee amount collected by the other similar hospitals and what is the fee collected by the respondents 3 to 7. There is no comparison chart made available to this Court to conclude that the reasons assigned on the part of the respondents 3 to 7 are justified. In such circumstances, this Court can only conclude that the attempt on the part of the respondents to reduce the stipend amount to the petitioners, who are trainees in

the Railway Hospital at Chennai would amount to discrimination. This is more so that even in the counter affidavit it was admitted by the respondents that the other similar hospitals are collecting huge amount and therefore they are paying the stipend amount without any reduction. This would only indicate that the other similarly situated hospitals are continued to pay the same amount as stipend and the petitioners alone are sought to be discriminated. Therefore, this Court is of the opinion that the contentions urged on behalf of the petitioners has to be accepted.

9. Accordingly, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.