



ALL INDIA ESIC SC/ST OFFICERS' & EMPLOYEES' FEDERATION

PANCHDEEP BHAWAN, WING NO. 4, SHIVPURI, PREM NAGAR, DEHRADUN, U.K. - 248007

EMAIL : heera@myesic.com & mahinder@myesic.com

www.myesic.com

(Regd. No. S 27458 of 1995)

PRESIDENT
ARJUN LAL MEENA, MP (LS)

WORKING PRESIDENT
DR. RAMESH KUMAR

SR. VICE PRESIDENT
SUDIP KUMAR SARKAR

SECRETARY GENERAL
HEERA SINGH
Mob. No. 9968241160

F.No. AIESIC.SC/ST.FED/2022/003

Dated: 17th August, 2022

To,



The Director General,
Headquarters Office,
ESI Corporation,
CIG Marg,
New Delhi - 110002.

Subject : Complaint of Shri S.P. Shakarwal regarding harassment and discrimination meted to his ward Dr (Ms.) Archa Shakarwal by various means and finally by not releasing her All Original Documents along with Provisional Certificate and final marksheet of Master of Surgery.

Sir,

With due regard, I would like to refer to subject cited above and invite your kind attention on **enclosed** distress call letter received from Shri S.P. Shakarwal addressed to Medical Superintendent, ESIC Hospital Basaidarapur regarding harassment and discrimination meted to his ward Dr (Ms.) Archa Shakarwal by various means and finally by not releasing her all-original documents along with Provisional Certificate and final marksheet of Master of Surgery.

In order to redress grievances and difficulties arising in various walks of life of members of SC and ST community, I take this opportunity to pursue case of his ill-treated ward studying / completing Master of Surgery from our prestigious ESIC Hospital PGMSR, Basaidarapur, Delhi.

The aggrieved student was not provided any solution to her workplace problems in ESIC Hospital PGMSR, Basaidarapur, Delhi.

Further to above, Now the aggrieved student has completed her Master of Surgery PG Course and ESIC Hospital PGMSR is not releasing her all-original certificates/documents along with Provisional Certificates and final marksheet of Master of Surgery. Whereas, the original certificates / documents, provisional certificates and final marksheet of Master of Surgery of other similarly placed students have been released.

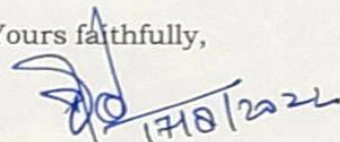
Handwritten signature and date: 17/8/22
Handwritten initials: HC

The same issue has come before Honourable High Court of Judicature at Madras in case of Dr. S. Giridharan & others vs. The State of Tamil Nadu, Case No. 12541 of 2022. In the Order (**copy enclosed**), the Honourable Court laid down following two principles.

- a) It is well settled that an educational certificate is not a marketable commodity, therefore, there cannot be exercise of any lien in terms of Section 171 of the Indian Contract Act, 1872. It has been held in catena of cases that management cannot retain the certificates of the students.
- b) The appellants in W.A.No.1182 of 2022 were identical placed. They were classmates of the writ petitioners herein. Therefore, a different yard stick cannot be adopted in the present case. That shall be a gross violation. A Statutory Authority will have to treat similarly placed persons in the same manner. Failure to do so would be an infraction of Article 14 of the Constitution of India.

In view of above legal principles and discriminatory decision taken by ESIC Hospital PGIMSR, Basaidarapur, Delhi in case of aggrieved person, I take this opportunity to seek relief and request you to kindly issue direction to ESIC Hospital PGIMSR, Basaidarapur, Delhi to immediately release all original documents along with provisional certificate and final marksheet of Master of Surgery so that harassment / discrimination to aggrieved person could be removed and parity could be maintained.

Yours faithfully,



(Heera Singh)
Secretary General

Enclosed: As above.

Copy to :-

MC (Med Educatn) through AD (Med Edu
Cell)

ESIC Hqs Office.



To the Medical Superintendent
ESIC Basaidarapur,
New Delhi-110015

Date: 18. July.2022

Sub: Release of all original documents along with provisional certificate and marksheet.

Respected Sir,

This is my request to kindly refer to my previous letters addressed to the respected dean and copy to you in my daughter's whole PG tenure (2019-22). The institute have not taken necessary action to stop my daughter's harassment despite conducting countless meetings. After reading your mail received on dated 30.may.2022 I came to the conclusion that your institute hasn't acknowledged my daughter's workplace problems despite the fact that we have conveyed each and everything in a well proved detailed manner already. The amount of mental anguish she has suffered while being ostracized in the whole surgery department throughout her PG tenure, what if she had taken some rouge action who's going to be responsible for that then, will you be able to return my daughter back?

Even now, institute is harassing my daughter by refusing to give her provisional certificate and marksheet which was awarded by the GGSIPU to my daughter recently for DMC registration, which you are bound to give after PG completion since these documents don't come under original documents submitted at the time of admission. Also, previous batches got these documents without any problem.

In this connection you are once again kindly requested to release all the documents as mentioned above as per order of the High court.

(Copy enclosed)

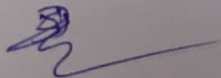
Thanking you.

With regards *Sd*
SP Shakarwal
Deputy director general(RTD)
CPWD

ECL as stated above: <https://www.livelaw.in/news-updates/madras-high-court-return-of-original-certificates-collected-during-admission-200593>

Copy Enclosed

- 1.) DG Head office (dir-gen@esic.nic.in)
- 2.) Dean Office (deanpgi-bsai.dl@esic.nic.in)





WEB COPY



W.P.No.12541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.05.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition No.12541 of 2022
and WMP.Nos.12002, 12006 and 12008 of 2022

- 1 Dr.S.Giridharan
- 2 Dr. Aishwarya Thanasekaran
- 3 Dr. Gunasekar V
- 4 Dr. Felex Maree Angelo D
- 5 Dr. Mohmed Imran H
- 6 Dr.Kaavya M
- 7 Dr. M.D. Tharunnh
- 8 Dr. J Rishi Kumar
- 9 Dr. Suganya P
- 10 Dr. Sabari Selvam
- 11 Dr. Sandhyaa K
- 12 Dr. Shanmugappiriyam C V
- 13 Dr. P Kishore
- 14 Dr. Kabilan V
- 15 Dr. Mathankumar S
- 16 Dr. Harshini S
- 17 Dr. B. Dharani
- 18 Dr. Karthick D
- 19 Dr. Velarasan
- 20 Dr. Thirunavukkarasu G
- 21 Dr. Balakumaran C
- 22 Dr. Nivetha G
- 23 Dr. Pravin M
- 24 Dr. Rema Vijayan
- 25 Dr. K Santha Sheela Kumar

.... Petitioners

-Vs-

- 1 The State of Tamil Nadu
Represented by its Principal Secretary
Health and Family Department Secretariat
Chennai-600 009



W.P.No.12541 of 2022

WEB COPY

2 Directorate of Medical Education
Represented by the Director of
Medical Education Kilpauk Chennai-600 010

3 Madras Medical College
Represented by its Dean
E.V.R. Salai Chennai-600 003

4 Government Kilpauk Medical College
Represented by its Dean
Poonamalee High Road.
Kilpauk Chennai-600 010

5 Stanley Medical College
Represented by its Dean No.1
Old Jail Road Chennai-600 001

6 Madurai Medical College
Represented by its Dean Panagal Road
Alwarpuram Madurai-625 050

7 Thoothukudi Government Medical College
Represented by its Dean
Kamaraj Nagar, Thoothukudi 628 008

8 Theni Government Medical College
Represented by its Dean
Kochi-Madurai -Tondi Point Rd Kanavilakku
Theni-625 531.

.... Respondents

Prayer :Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to return the original certificates of the petitioners collected by the 3rd to 8th respondent at the time of their admission.

For Petitioners : Mr. E.Manoharan
For Respondents : Mr.D.Ravichander,
Special Government Pleader



W.P.No.12541 of 2022

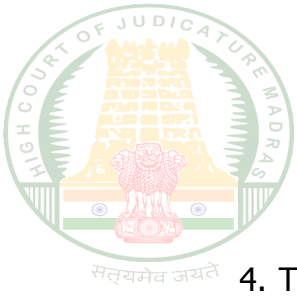
ORDER

WEB COPY

Heard the learned counsel appearing for the writ petitioners and the learned Special Government Pleader appearing for the respondents.

2. The petitioners are qualified Doctors, who obtained Post Graduate degree in the respective colleges (respondents 3 to 8) during the academic year 2018-2021. While obtaining admission, they had undertaken to serve in Government Hospitals for a period of two years. To this effect, they had also executed bonds. After, they successfully completed their PG Courses in May 2021, they were called upon to do Covid-19 duty. They worked on temporary and contractual basis for about 10 months. Thereafter they were relieved. They were not issued with any fresh posting orders. The petitioners wrote to the respondents demanding return of their original certificates collected by the respective colleges at the time of admission. The respondents have taken a stand that since the petitioners had not served for a full period of two years as per the bond terms and conditions, the original certificates could not be returned. That necessitated filing of this writ petition.

3. The learned Special Government Pleader strongly contested the writ prayer. He submitted that the petitioners are squarely bound by the terms of the undertaking which they had voluntarily given with open eyes at the time of admission and now they cannot be allowed to go back on their undertaking.



W.P.No.12541 of 2022

WEB COPY

4. Though the submission made by the learned Special Government Pleader is quite attractive, I must note that the similarly placed candidates had already been granted relief. They filed in W.P.No.28526 of 2021 seeking return of their certificates and the same was disposed of with certain directions. Aggrieved by the same, they filed W.A.No.1182 of 2022 before the Hon'ble First Bench. During the pendency of the writ appeal, the Director of Medical Education, Kilpauk, Chennai issued an order dated 21.04.2022, instructing the respective Deans of the Government Medical Colleges to return the original certificates to the appellants. In view of the same, the writ appeal was disposed of on 27.04.2022 with a direction to the respective Deans of the Government Medical Colleges to return the original certificates to the appellants at the earliest, in any case, not later than 15 days from the date of production of a certified copy of the judgment. In other words, even though they did not fulfill the terms and conditions of the bond, they were able to get back their certificates.

5. The Learned Special Government Pleader would point out that the said order cannot be cited as a precedent. He would specifically highlight the fact that while in the earlier case, the Director has passed an order dated 21.04.2022, in the present case, no such communication had been issued.



W.P.No.12541 of 2022

6. While I do sustain the said stand of the learned Special Government Pleader, still in my view, the writ petitioners are entitled to relief for two reasons:

WEB COPY

a) It is well settled that an Educational certificate is not a marketable commodity, therefore, there cannot be exercise of any lien in terms of Section 171 of the Indian Contract Act, 1872. It has been held in catena of cases that management cannot retain the certificates of the students.

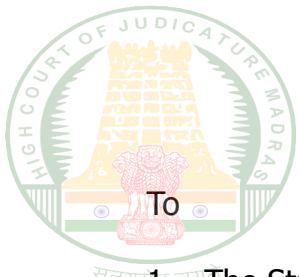
b) The appellants in W.A.No.1182 of 2022 were identical placed. They were classmates of the writ petitioners herein. Therefore, a different yard stick cannot be adopted in the present case. That shall be a gross violation. A Statutory Authority will have to treat similarly placed persons in the same manner. Failure to do so would be an infraction of Article 14 of the Constitution of India.

For the aforesaid two reasons, this writ petition is allowed. The respective respondents are directed to return the original certificates to the writ petitioners within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

13.05.2022

Index : Yes/No
Internet : Yes/No
KST/mp

5 / 7



W.P.No.12541 of 2022

To

- 1 The State of Tamil Nadu
Represented by its Principal Secretary
Health and Family Department Secretariat
Chennai-600 009
- 2 Directorate of Medical Education
Represented by the Director of
Medical Education Kilpauk Chennai-600 010
- 3 Madras Medical College
Represented by its Dean
E.V.R. Salai Chennai-600 003
- 4 Government Kilpauk Medical College
Represented by its Dean
Poonamalee High Road.
Kilpauk Chennai-600 010
- 5 Stanley Medical College
Represented by its Dean No.1
Old Jail Road Chennai-600 001
- 6 Madurai Medical College
Represented by its Dean Panagal Road
Alwarpuram Madurai-625 050
- 7 Thoothukudi Government Medical College
Represented by its Dean
Kamaraj Nagar,Thoothukudi 628 008
- 8 Theni Government Medical College
Represented by its Dean
Kochi-Madurai -Tondi Point Rd Kanavilakku
Theni-625 531.



WEB COPY



W.P.No.12541 of 2022

G.R.SWAMINATHAN, J.

KST/mp

W.P.No.12541 of 2022

12.05.2022