

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 9th OF MAY, 2022**

WRIT PETITION No. 18370 of 2021**BETWEEN :-**

Dr. Archana Govind Rao Bhange,
D/o Mr. Govind Rao Gunaji Rao
Bhange, Aged about 29 years,
Occupation- Doctor, R/o Pimpri,
Chinchwad, Pimpri 18 District
Pune (Maharashtra)

.....Petitioner

(By Shri Bramha Nand Pandey, Advocate.)

AND

1. State of Madhya Pradesh through Secretary, Medical Education Department, Vallabh Bhawan, Bhopal, M.P.
2. The Commissioner, Health Services, Vallabh Bhawan, Bhopal (M.P.)
3. Director, Medical Education, Satpura Bhawan, Bhopal, M.P.
4. M.G.M. Medical College, Indore Through its Dean, Indore, M.P.

.....Respondents

(By Ms. Janhavi Pandit, Deputy Advocate General)

| | |
|---------------------------------------|------|
| Whether approved for reporting | Yes. |
| Law Laid down :- | |

O R D E R (Oral)

(09.05.2022)

Sujoy Paul, J.:-

The pivotal question based on the admitted facts of this case is *whether the petitioner who was given posting order on 07.09.2018 (Annexure P/9) before passing the Post Graduate final year examination (which he admittedly passed on 31.12.2018) is entitled to get relaxation from bond conditions and further entitled to get back his original educational qualification documents from the respondents ?*

2. The admission in the Post Graduate Colleges is governed by the statutory Rules namely **Madhya Pradesh Medical and Dental Post Graduate Course (Degree/Diploma) Admission Rules, 2015** (hereinafter called as '**Admission Rules**'). Rule 11 is relevant for the purpose of answering the question involved.

3. This case is pregnant with peculiar facts. As per Rule 11 of Admission Rules, the Dean of the concerned Educational Institution was required to furnish a list of successful Post Graduate candidates to Commissioner, Health Services. In turn, said Commissioner was

required to issue appointment orders to such successful candidates within three months after declaration of results, failing which, bond filed by the candidate will be treated to be cancelled as a fiction.

4. The main contention of the petitioner is that the respondents issued a posting order dated 07.09.2018 (Annexure P/9) which is prior to passing of said Post Graduate course examination. At that point of time and before passing the PG Course, the petitioner was not entitled to be posted/appointed. Thus, the petitioner did not join services pursuant to order dated 07.09.2018. Shri Brahma Nand Pandey, learned counsel for the petitioner submits that to this extent his relief No.7(i) has rendered infructuous.

5. The case of the petitioner is that after passing of examination, at no point of time, any appointment order was ever issued to the petitioner. Thus, Rule 11 could not be translated into reality from the date petitioner passed the Post Graduate Examination.

6. The respondents/Authorities now have passed the order dated 06.05.2022, which is placed on record with I.A. No.5925/2022. In this letter, the Directorate Health Services mentioned that petitioner is permitted to join pursuant to order dated 07.09.2018 (Annexure P/9). In this order, it is clearly admitted that after passing of PG examination, no

fresh appointment order/amended order was issued in respect of the present petitioner.

7. In this view of the matter, the pivotal question aforesaid deserves determination.

8. The arguments of learned Deputy Advocate General is that as per Rule 11 of Admission Rules, it is the Dean of the concerned institution who was required to send the list of successful candidates to the Directorate/Commissioner. Upon receiving such list only the Commissioner was obliged to issue appointment orders within three months. Thus, starting point to calculate the period of three months is the date when the list was sent by the Dean to the Commissioner. Since Dean has never sent the list, the State is still free to apply the bond conditions.

9. No other point is pressed by the parties.

10. We have heard the parties at length and perused the record.

11. The purpose, object and intention while inserting Rule 11 is to see that the Dean will send the list of successful candidates to the Commissioner. Although, no period of limitation for sending that list is prescribed in Rule 11 of Admission Rules. If it is read in the manner suggested by the Government counsel, it will give an unfettered and unlimited period to the Dean to send the list as per his whims and fancies. In our opinion, the purpose of Rule 11 is to ensure that soon after the

candidate has passed, the Dean must send the list of successful candidates to the Commissioner, and in turn, the Commissioner will appoint them within 3 months therefrom.

12. Ordinarily, a candidate would like to serve the State in rural, difficult, and remote areas immediately after completion of his or her educational qualification. If it is not implemented forthwith, the candidate is bound to take services somewhere else. For this purpose, three months period is prescribed in Rule 11 to ensure that appointment order is issued with quite promptitude. Any other interpretation will create serious hardship to the candidates and candidates who have joined elsewhere and worked for many years may be required to serve the state government department as per bond condition by leaving their suitable job. This can't be the purpose of inserting Rule 11.

13. Indisputably, the petitioner was appointed/posted much before he passed the Post Graduate course. Thus, such appointment dated 07.09.2018 is not in consonance with Rule 11 and petitioner's non-joining will not create any right in favour of the State.

14. Learned Deputy Advocate General laid emphasis on following expression mentioned in Rule 11 "*however, such Doctors will have to work under the State Government as directed*". It is argued that even if

bond conditions are not binding on the petitioner, he is bound to serve the State Government as per the highlighted portion.

15. So far bond conditions are concerned, a plain reading of Rule 11 makes it clear that if appointment order is not issued to the successful candidates within three months, the bond conditions will be treated to be cancelled. This aspect was considered by this Court recently in **W.P. No.13445/2018 (Dr. Rahul Mittal vs. State of Madhya Pradesh & others)**. The relevant paras are reproduced here under :-

“17. Rule 11 of **Admission Rules** reads as under :-

“11. Fee, Bond etc. :-

Selected candidates except In-service/Demonstrator, non service candidates will have to submit a Bond as per Government instructions i.e. Rs.10.00 Lac. for postgraduate degree and Rs.8.00 Lac. for Diploma courses for serving under the State Government for 1 years after completing P.G. degree/Diploma Course. All Deans of autonomous colleges will provide the list, to the Commissioner, Health Services of candidates who are appearing for University exams from their institute at least three months before the start of examination. They will also provide list of successful PG candidates. The Commissioner, Health Services will issue appointment orders to such successful candidates within three

months after declaration of the result, failing which the Bond filled by the candidate will automatically be deemed as cancelled.”

[Emphasis Supplied]

The underlined portion of above Rule shows that the law makers in their wisdom decided a period of 3 months after declaration of result to provide appointment to successful candidates failing which bond conditions will become ineffective automatically.

18. A careful reading of this Rule makes it clear that the concerned medical college is required to provide list of successful P.G. candidates to the Commissioner, Health Services to enable the Commissioner to issue appointment orders to ‘such successful candidates’ within three months after declaration of the result. This Court in W.P. No.3628/2017 opined that the starting point of three months is after declaration of the result which necessarily means after communication of result to the Commissioner, Health Services. The result in the instant case was admittedly declared on 03.03.2017 and this is also not in dispute that till date no appointment order has been issued to the petitioner.

19. In our opinion, when a statutory Rule couched in a language, which includes a *deeming clause*, it should be given effect to to its fullest. In other words, the intention of law makers should be respected where they have used a deeming provision so that no declaration or consequential order is required to be passed.

A microscopic reading of second part of Rule 11 shows that if appointment order is not issued to the candidate within three months, the bond filled by the candidate will automatically deemed to be cancelled. The expression “*failing which the bond filled by candidate will automatically be deemed as cancelled.*” must be given its full and complete meaning. In our view, if Commissioner has failed to issue an appointment order within three months, the bond conditions have lost its significance or in other words such conditions pales into insignificance and cannot be enforced against the petitioner. The Apex Court in catena of judgments dealt with the effect and impact of *deeming clause*. It is apt to consider the legal journey on this aspect.

20. After ascertaining the purpose, “full effect must be given to the statutory fiction and it should be carried to its logical conclusion” [See :- **State of Bombay vs. Pandurang Vinayak**, AIR 1953 SC 244, p. 246; **American Home Products Corporation vs. Mac Laboratories**, (1986) 1 SCC 465, p. 501 ; **Union of India vs. Jalyan Udyog**, supra, pp. 96, 97; **P.E.K. Kalliani Amma vs. K. Devi**, AIR 1996 SC 1963, p. 1976; **Mundri Lal vs. Sushila Rani**, (2007) 8 SCC 609 para 26] and to that end “it would be proper and even necessary to assume all those facts on which alone the fiction can operate” [See:- **C.I.T., Delhi vs. S. Teja Singh**, AIR 1959 SC 352, p. 355]. In an oft-quoted passage, LORD ASQUITH stated: “*If you are bidden to treat an imaginary state of affairs as real, you must*

*surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it - The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.” [See:- **East End Dwelling Co. Ltd. vs. Finsbury Borough Council, (1951) 2 All ER 587, p. 589**; referred to in **State of Bombay vs. Pandurang Vinayak, supra, p. 246**; **C.I.T., Delhi vs. S. Teja Singh, supra, p. 355**; **Rajendraswami vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad, AIR 1965 SC 502, p. 505**; **Shatrunjit (Raja) vs. Mohammad Azmat Azim Khan, AIR 1971 SC 1474, p. 1476**; **Daya Singh vs. Dhan Kaur, AIR 1974 SC 665, p. 668**; **Boucher Pierre Andre vs. Superintendent, Central Jail, Tihar, AIR 1975 SC 164, p. 166**; **Sundar Dass vs. Ram Parkash, AIR 1977 SC 1201, p. 1205**; **Ashok Leyland Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 1**; **State of West Bengal vs. Sadam K. Bormal, AIR 2004 SC 3666, p. 3673**; **Clariant International Ltd. vs. Securities & Exchange Board, (2004) 8 SCC 95 paras 6 and 7**; See further **Mohammad Iqbal Madar Sheikh vs. State of Maharashtra, (1996) 1 SCC 722, p. 727**; **Manorey Alias Manohar vs. Board of Revenue (U.P.), (2003) 5 SCC 521, pp. 526, 527** (deeming provision to be given full effect).*

21. About legal fiction Apex Court held that -

“We have to give effect to the language of the section when it is unambiguous and admits of no doubt regarding its interpretation, particularly when a legal fiction is embedded in that section. A legal fiction has a limited scope. A legal fiction cannot be expanded by giving purposive interpretation particularly if the result of such interpretation is to transform the concept of chargeability.”(See:- **Vodafone International Holdings BV vs. Union of India (2012) 6 SCC 613, para 90**).

24. We find substance in the argument of learned counsel for the petitioner that in this order, there is nothing which prevents the State Government to issue appointment order to the petitioner. Even if, W.P. No. 11900/2016 was dismissed by passing a common order, it cannot be said that bond conditions will still survive despite non-compliance of Rule 11 of the **Admission Rules**.

25. It is not the case of the respondents that even after three months or at any later point of time, the petitioner was given appointment pursuant to his being successful PG Diploma Candidate. Thus, the respondents have flouted /breached Rule 11 of the **Admission Rules** and, therefore, the bond condition cannot be enforced against him in view of automatic/deeming clause.

26. Learned Deputy Advocate General for the respondent/State during the course of argument strenuously contended that the expression *‘however such Doctors will have to work*

under the State Government as directed has a definite meaning and purpose. This shows that whether or not petitioner has been given appointment by the Commissioner within three months, he is bound to serve the State Government in rural areas as per the bond conditions. If the said Rule is read with affidavit filed by the petitioner on 12.4.2017, it will be obligatory on the part of the petitioner to serve in the rural area. We do not see any merit in this contention. This phrase on which heavy reliance is placed, cannot be divorced from rest of the Rule namely Rule 11. It is inseparable part and parcel of Rule 11. The words '*such Doctors*' is repeatedly used in Rule 11 and in our considered judgment, these words '*such Doctors*' relate to those successful candidates who have passed the relevant course and their list is furnished by the concerned Medical College to the Commissioner, Health Services. If bond pales into insignificance and vanished in thin air because of deeming provision and because of non-appointment of petitioner within the stipulated time, we see no reason to give life to such bond which died as per the deeming expiry date. The shelf life of the bond was dependent upon issuance of appointment orders to such successful candidates within stipulated time failing which the Rule will have its own consequence. This is trite that when language of the Rule is plain and unambiguous, it has to be given effect to irrespective of consequences [See:- **Nelson Motis Vs. Union of India 1992 (4) SCC 711**].

28. In view of the foregoing analysis, the bond conditions automatically stood cancelled because of breach of Rule 11 of **Admission Rules**. Resultantly, the said condition cannot be enforced against the petitioner anymore. Consequently, respondents are bound to return original documents to the petitioner and furnish him the NOC. It is made clear that this order will not come in the way of the respondents in enforcing the affidavit of petitioner dated 12.4.2017 in accordance with law, if law so permits. The entire exercise of returning original documents and issuance of NOC be completed within 60 days from the date of communication of this order.”

(Emphasis supplied)

16. Pertinently, in the case of **Dr. Rahul Mittal (supra)**, no appointment order was ever issued to the said candidate/petitioner, who had passed the relevant course at relevant point of time. The only difference in the present case is that although a posting order was issued to the petitioner on 07/09/2018 (Annexure P/9), the said appointment/posting order was not in accordance with Rule 11 because it was issued before completion of petitioner’s qualification. Thereafter, admittedly no fresh appointment order or modified order was passed. Thus, in view of Deeming clause of Rule 11 and as per the order passed by this Court in **Dr. Rahul Mittal (supra)**, bond conditions cannot be enforced against the petitioner.

17. Resultantly, respondents are bound to return his original educational qualification documents to the petitioner. The same shall be returned within 45 days' from the date of production of copy of this order.

18. In view of finding given in para-28 of the order of **Dr. Rahul Mittal (supra)**, it is open to the State Government to seek enforcement of the last sentence of Rule 11 on which heavy emphasis was laid by learned Deputy Advocate General provided law permits the State to do so.

19. The petition is **partly allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE