

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WA.No. 2098 of 2015 () IN WP(C).26261/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 26261/2015 of HIGH COURT OF KERALA
DATED 18-09-2015**

APPELLANT(S)/PETITIONER:

**ASHIS MONIES AGED 19 YEARS
S/O.MONIES P.TPARAPPURAM HOUSE, AMBALLOOR P.O.
VIA KANJIRAMATTOM, ERNAKULAM DISTRICT.**

BY ADV. SRI.J.ABHILASH

RESPONDENT(S)/RESPONDENTS:

- 1. EMPLOYEES STATE INSURANCE CORPORATION
REPRESENTED BY ITS DIRECTOR GENERAL, ESI CORPORATION
PANCHADEEP BHAVAN
COMMARADE INDRAJITH GUPTA (CIG) MARG
NEW DELHI-110002.**
- 2. THE DEPUTY MEDICAL COMMISSIONER
MEDICAL EDUCATION, ESI CORPORATION, PANCHADEEP BHAVAN
COMMARADE INDRAJITH GUPTA (CIG) MARG
NEW DELHI-110002.**
- 3. MEDICAL DIRECTOR
ESI CORPORATION, PANCHADEEP BHAVAN
COMMARADE INDRAJITH GUPTA (CIG) MARG
NEW DELHI-110002.**
- 4. REGIONAL DIRECTOR
ESI CORPORATION, SUB REGIONAL OFFICE, THRISSUR
PIN 680001.**

BY SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WA NO.2098/15

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A: TRUE COPY OF THE CERTIFICATE ISSUED BY
ERNAKULAM MEDICAL CENTRE.

ANNEXURE B: TRUE COPY OF THE CERTIFICATE ISSUED BY
VIJAYALAKSHMI MEDICAL CENTRE.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

=====

W.A. No. 2098 of 2015

=====

Dated this, the 23rd day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard the learned counsel for the appellant as well as the learned counsel appearing for the 1st respondent.

2. This writ appeal is filed against judgment dated 18th September, 2015 in WP(C) No.26261/2015 by which the learned Single Judge dismissed the writ petition. Writ petition was filed by the petitioner, who was an applicant for MBBS course for the year 2015-2016. Petitioner had applied for consideration of his candidature under the quota earmarked for ESIC Management Quota (Ward of Insured Persons). Clause 8 of Ext.P2 defines “insured person”, which is to the following effect;

“8. Insured person for the purpose of availing benefit ESIC Management Quota for his/her wards shall be, as under

“The 'Insured Person' shall be an 'employee' as defined in the ESI Act; and he/she should have been in continuous insurable employment for a minimum period of five years as on 1st January of the year of

-:2:-

admission and should have paid at least 78 days of contribution in each Contribution Period, during this five year period. The 5 year period would be counted from the date of entry into the ESI Scheme. For employees who entered the Scheme prior to 9th June, 2011, the date of entry into the Scheme for the purpose of availing benefit of ESIC management quota for his/her wards would be the date of submission of 'Declaration Form' by the employer in respect of the employee concerned at the Branch office or another appropriate office of the ESIC. For employees who entered the Scheme after 9th June, 2011, the date of entry into the Scheme for the above purpose would be the date of registration available in the IP database of the ESIC. In case there is default or delay on the part of the employer in getting itself or the concerned employee covered under the Scheme, the ESIC will not be responsible for the said default or delay. Any period prior to the date of entry described above would not be counted towards the 05 year period of eligibility for the purpose of availing benefit of ESIC Management Quota."

3. The proforma of "Ward of Insured Person" Certificate has been annexed by the petitioner himself as Ext.P2(11) where the petitioner claimed contribution period for academic session w.e.f. 1st April, 2010. According to the definition as extracted above, the requirement is continuous insurable employment for a

-:3:-

minimum period of five years as on 1st January of the year of admission. The year of admission being 2015-2016, the period of first year was required to be completed by 1st January, 2015. The own case of the petitioner's mother is that she had not completed 5 years. Learned counsel for the petitioner submits that petitioner has also claimed an earlier employment in an institution covered by ESI contribution, viz., Ernakulam Medical Centre. No details of employment except Ext.P3, which is a certificate issued by the ESI corporation giving only the date of entry as 6/9/2007, has been annexed. There is nothing to indicate that in the previous employment, the petitioner's parents had paid the minimum 78 days of contribution in each contribution period. More so, in Ext.P2 (11), petitioner had in proforma certificate had claimed period for employment only from 1st April, 2010. Learned Single Judge thus rightly held that petitioner's mother having joined on 1st April, 2010 and having not completed 5 years period, could not be treated to be ward of insured and has rightly been refused to be considered under the quota earmarked for ward of insured person.

4. Learned counsel appearing for the respondents has

placed reliance on the Division Bench judgment of this Court in WA No.1412 of 2014 dated 15th October, 2014 where following was held by this Court in paragraphs 12 and 13.

“12. The words “five years continuous insurable employment” is prefixed by “a period of five years as on 1st January of the year. The plain and simple meaning of the words shall be completion of five years continuous period as on 1st January of the year.

13. Admittedly, the institution from where the certificate was applied came under the scheme only on 1.6.2009. The period of five years could be completed only on 31.5.2014 and 1st January being the cut off date for scrutinising the application, no error was committed by the Corporation in not issuing the certificate to petitioner's parents. The learned Single Judge as well as the writ petitioner has placed reliance on the definition of “year” in section 2(w) of the Employees State Insurance Regulation, 1950. The said definition of “year” is “year means a calender year”. The said definition in no manner militates clause 8 of the notice or on the interpretation which has been put up by the Corporation, of the period. Where a period of continuous five year has been contemplated in the notice, that obviously means five completed calender years. The said definition also in no manner help the writ petitioner.”

In view of the aforesaid, we are of the view that petitioner's

W.A. No.2098/15

-:5:-

mother having not completed the requisite number of period for being considered for admission under the quota earmarked for ward of insured persons, learned Single Judge did not commit any error in dismissing the writ petition. Consequently, the writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

23/09/2015

//True Copy//

PS to Judge