

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 26300 of 2015 (J)

PETITIONER :

**ASWATHY K.A., AGED 19 YEARS,
D/O. LATHA DEVI, KOLLERIL HOUSE, CANAL ROAD,
AMBALAMEDU P.O., PUTHENCruz VILLAGE,
ERNAKULAM DISTRICT.**

BY ADV. SRI.J.ABHILASH

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-680001.**

BY SRI.P.SANKARANKUTTY NAIR, SC,

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE COUNSELING RANK LETTER.
- P2 : COPY OF THE SCHOOL LEAVING CERTIFICATE.
- P3 : COPY OF THE CERTIFICATE OF HIGHER SECONDARY EXAMINATION.
- P4 : COPY OF THE ADMISSION NOTICE ALONG WITH THE RELEVANT ANNEXURES.
- P5 : COPY OF THE EXTRACT OF THE CONTRIBUTION MADE BY PETITIONERS MOTHER TO ESI.
- P6 : COPY OF THE COUNSELING NOTICE.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.26300/2015**  
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Dated this the 29th Day of September, 2015

J U D G M E N T

Read order dated 01/09/2015. It appears that the petitioner has secured first rank in the list prepared for allotment of seats in MBBS Undergraduate Course under the category of “Wards of Insured persons”.

2. As seen from the records, the insured could not work for 78 days during the period of contribution, for the reasons beyond her control. The petitioner also relies on the judgment of this Court in W.P.(C). No.23442/2013, wherein, this Court held that a person, who is on medical leave would be eligible to count the medical leave for the purpose of reckoning 78 days. Therefore, when there is an occasion where the insured could not work for 78 days during the calendar year, for the reasons beyond the control of the insured, this Court is of the view that the employee concerned shall be deemed to be in employment for 78 days for the limited purpose of issuing certificate. Thus, in appropriate cases, where circumstances demand, that shall be taken into account for giving relief.

W.P.(C).No.26300/2015

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3. However, this judgment cannot be construed as a relaxation for mandate of counting 78 days for the purpose of claiming the benefit of the scheme for admission in MBBS course. This judgment is rendered only taking note of the peculiar circumstances of the facts of the case and therefore, without treating it as a precedent, allotment already made shall be made absolute.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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W.P.(C).No.26300/2015

-:3:-

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.26300/2015**  
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Dated this the 1st Day of September, 2015

O R D E R

The petitioner, an applicant for allotment to MBBS course under ESIC Management quota, has approached this Court for the reason that the official respondents refused to issue certificate showing that the petitioner is the ward of insured.

2. As per the prescriptions and prospectus, the insured need to have paid at least 78 days of contribution in each contribution period during the last 5 years. It is seen that from Ext.P5 that the petitioner's mother had paid contribution for 78 days for each 4 years, except for the period from 01/10/2013 to 31/03/2014.

3. The petitioner's case is that the petitioner being a casual employee, the employer did not provide employment for the entire mandatory days though, the petitioner was willing. The petitioner also challenges the prescription of 78 days, being a minimum requirement for eligibility under the prospectus.

4. This Court is of the view that the challenge being made

W.P.(C).No.26300/2015

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regarding prescription of 78 days of contribution in the prospectus, a probe is necessary, especially when an insured claims that she could not work for the entire minimum required period for the reasons beyond her control. Considering the fact that the petitioner's mother has paid contribution for the requisite number of days for the past 4 years, this Court is of the view that notwithstanding the fact that the insured has not put up 78 days for the period from 01/10/2013 to 31/03/2014, the petitioner shall be considered for a quota, provided the petitioner's application has been received by the concerned respondents within an outer limit of 31/08/2015 and it satisfies all other conditions, except the certificate of the ward of insured person.

A.MUHAMED MUSTAQUE, JUDGE

Handover
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