

\$~35, 36, 37 and 38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 07.12.2015*

+ **W.P.(C) 11184/2015**

THE DIRECTOR GENERAL EMPLOYEES STATE
INSURANCE CORPORATION Petitioner

Through : Mr. Yakesh Anand with Ms. Sonam
Anand, Advocates

versus

DR. VIVEK RANA Respondent

Through : Nemo

+ **W.P.(C) 11185/2015**

THE DIRECTOR GENERAL EMPLOYEES STATE
INSURANCE CORPORATION Petitioner

Through : Mr. Yakesh Anand with Ms. Sonam
Anand, Advocates

versus

DR. MANOJ KUMAR Respondent

Through : Nemo

+ **W.P.(C) 11191/2015**

THE DIRECTOR GENERAL EMPLOYEES STATE
INSURANCE CORPORATION Petitioner

Through : Mr. Yakesh Anand with Ms. Sonam
Anand, Advocates

versus

DR. SAMEER AND ANR. Respondents

Through : Nemo

+ **W.P.(C) 11200/2015**

THE DIRECTOR GENERAL EMPLOYEES STATE
INSURANCE CORPORATION Petitioner

Through : Mr. Yakesh Anand with Ms. Sonam
Anand, Advocates

versus

DR. PRAVEEN LATA Respondent

Through : Nemo

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

CM APPL. No. 29105/2015 in W. P. (C) 11184/2015,

CM APPL. No. 29107/2015 in W.P. (C) 11185/2015,

CM APPL. No. 29130/2015 in W. P. (C) 11191/2015 and

CM APPL. No. 29149/2015 in W. P. (C) 11200/2015

1. Exemption allowed subject to all just exceptions.
2. Applications stand disposed of.

W. P. (C) Nos. 11184/2015, 11185/2015, 11191/2015 and 11200/2015

3. The aforesaid four matters were heard together, as the facts of the same are similar, and hence, are being disposed of by a common order.
4. The aforesaid writ petitions have been filed by the petitioner under Article 226 and 227 of the Constitution of India seeking to set aside the order dated 14.02.2014 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), Principal Bench, New Delhi in O.A. No. 1990/2012 with O.A. No's. 2065/2012, 2339/2012, 957/2013, whereby the Tribunal allowed the above mentioned O.A.'s filed by the respondents herein.
5. The petitioner, Employees State Insurance Corporation (ESIC), published an advertisement in February 2003 for filling up the post of Insurance Medical Officers Grade II. It was mentioned in the said advertisement that the numbers of posts are 300. The respondents applied for the said post in the OBC category as they

belong to the Jat community which falls in the OBC category as per the list under the Government of National Capital Territory of Delhi. They were selected in the said category and accordingly appointed.

6. The petitioner ESIC vide order dated 27.04.2012 issued identical show cause notices to all the respondents as to why their services should not be terminated on the ground that they were not covered in the list of OBC Category of the Central Government.
7. The respondents had challenged the aforesaid show cause notice before Tribunal whereby the Tribunal vide its order dated 14.02.2014 allowed the O.A.'s filed by the respondents.
8. Mr. Yakesh Anand, learned counsel appearing on behalf of the petitioners submits that the appointments made in favour of the respondents is bad in law, illegal and based on a reservation certificate which was not covered in the OBC category of the Central List (Mandal List).
9. The counsel for the petitioner further submitted that the respondents were aware of the fact that in order to seek reservation, they should have been of an OBC community as per the Central List. The counsel further emphasised that the respondents had secured their appointment under OBC (Jat) category whereas they were not covered in the OBC category of the Central Government List.
10. To substantiate his arguments learned counsel for the petitioner has relied on ***Pankaj Vs. Union of India ILR (2005) II DELHI 341, Satish Kumar & Anr. Vs. UOI & Ors. LPA No. 529/2004 dated 03.08.2007*** passed by Delhi High Court and ***Iqbal Khatri Vs. Employees State Insurance Corporation, 2011(9) AD (D) 695.***

11. We have heard learned counsel for the petitioner and considered his submissions. We have also examined the impugned order passed by the Tribunal.
12. Learned counsel for the petitioner has relied on the case of ***Pankaj Vs. Union of India ILR (2005) II DELHI 341*** wherein the employee was appointed to a temporary post of LDC and was on probation for two years and was governed by Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, however, in the present case the respondents were governed by the Employees State Insurance Cooperation (Staff and Conditions of Service) Regulation, 1959 and were granted employment for permanent posts. Hence, not applicable to this case. Counsel for the petitioner has further relied on ***Satish Kumar & Anr. Vs. UOI & Ors. LPA No. 529/2004 dated 03.08.2007*** wherein, the employees were terminated within a reasonable period of time by the Airport Authority, However, in the present case the petitioner ESIC after the lapse of almost 5 years started conducting the verification process belatedly in 2009 i.e. after completion of probationary period of 2 years, moreover, the respondents were even granted promotions within that period of employment.
13. While there is no quarrel to the fact that the respondents cannot be considered as OBC candidates for the post advertised as the said community is not an OBC community as per the Central List. However, we find that the respondents had provided caste certificate of OBC issued by the State Government which it seems was overlooked at the time when the form of the respondents was scrutinized and appointment letter was issued. No doubt, as per Clause 2 of the appointment letter, it was made clear that in case

the respondents belongs to a Scheduled Caste/Scheduled Tribe/OBC Community, his/her appointment will be provisional and will be subject to the confirmation by the Competent Authority within a reasonable period.

14. In identical circumstances, the order of the Tribunal was not interfered with by a Division Bench of this court in the case of ***Union of India Vs. Smt. Manju Lochav***, W. P. (C) No. 2842/2013 and reliance is also placed on an order passed by the Supreme Court of India in the case of ***Iqbal Khatri & Ors. Vs. Employees State Insurance Corp. & Ors.***, Civil Appeal No. 9042/2013. The order reads as under :

“Leave granted.

Heard learned counsel for the parties.

We find from the impugned order that the only reason why the appellants had been denied appointment is because they belong to the OBC category (Jat) in the Delhi State List but this community is not included in the Central List. It is not disputed that the appellants have been in service for a period of 4-5 years and they have an unblemished record. It is also not disputed that they did not make a misrepresentation at any point of time in this regard.

In the circumstances of the case, we consider it appropriate in the interest of justice to direct to respondents to accommodate the appellants. We must observe that this order is being passed in the circumstances of the case as the posts belong to Class IV employees. We further observe that this shall not act as a precedent. It is made clear that the appellants shall not be entitled to any back wages for the period they have not worked but they shall be entitled to all consequential benefits.

The appeals stand disposed of accordingly.”

15. In the present case, we find that the respondents had produced caste certificates which are not forged and fabricated but genuine certificates obtained from the Delhi Government. After the filing of the certificates, the respondents have worked for more than 5 years and we are of the view that at this stage if their services are

terminated, serious prejudice would be caused to their rights as they have become over age and they would not be eligible for any government job. There would be no advantage to the petitioners either as the post at this stage cannot be carried forward.

16. Accordingly, we find no merit in these writ petitions and make it clear that this order is passed in the facts and circumstances of this case and it would not be treated as a precedent.

CM APPL. No. 29105/2015 in W. P. (C) 11184/2015,
CM APPL. No. 29107/2015 in W.P. (C) 11185/2015,
CM APPL. No. 29130/2015 in W. P. (C) 11191/2015 and
CM APPL. No. 29149/2015 in W. P. (C) 11200/2015.

17. In view of the order passed in the writ petitions, these applications are also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 07, 2015

sc//