IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP no. 15512 of 2018 (O&M)
Date of Decision : 24.08.2018

Sakshi

....Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Sanjiv Kumar Aggarwal, Advocate for the petitioner(s)

Mr. Vikas Suri, Sr. Standing counsel
for respondents no. 2 and 3

Mr. D.S.Matya, Advocate for respondent no.4

<u>MAHESH GROVER, J.(ORAL)</u>

The instant writ petition has been filed under Article 226 of the Constitution of India where petitioner prays that her son be granted the admission under quota of 'Ward of Insured Persons' (IPs) in UG course (MBBS/BDS) in ESIC Medical/ Dental and some Govt. Medical Colleges .

Un-disputably there is a provision in which the wards of insured persons (IPs) are entitled to a quota. The relevant is extracted as below:-

"4.5 After qualifying xxxxx

Group I xxxxx

Group II xxxxx

Group III IPs who have been in continuous insurable employment for a minimum period of three years as on, and immediately preceding the 1st January of the year of admission. The continuous insurable employment of three years herein means that the contribution in respect of him/her were paid/payable for not less than 78 days in all the five contribution periods (CPs) immediately preceding the above 1st January and shown in the table below. However, if the IP does not satisfy the requirement of the above 78 days on account of exigency/ exigencies beyond the control of the IP, the five such contribution periods shall be allowed to reckon from among the 05+02* contribution period immediately preceding the above 1st January and shown in the table below:

Sr.No.	Contribution periods for academic session 2018-19
(i)*	1st April, 2014 – 30th, September, 2014
(ii)*	1st October, 2014 - 31st March, 2015
1.	1st April, 2015 - 30th September, 2015
2.	1st October, 2015 - 31st March, 2015
3.	1st April, 2016 - 30th September, 2016
4.	1st October, 2016 - 31st March, 2017
5.	1st April, 2017 - 30th September, 2017

Note:

a)It is clarified that the minimum continuous period (including all exigencies) of 5 years shall commence from 1.1.2012; of four years shall commence from 1.1.2013 and of 3 years shall commence from 1.1.2014 respectively."

The reason for denial of consideration to the petitioner's ward is on account of the schedule, noticed above, of the petitioner not being registered for a period of three years as a requirement in Group III.

Learned counsel for the petitioner contends that she fulfills all the requisites which is disputed by the respondents with reference to the fact of the petitioner's being registered at a subsequent date dis-entitling her to the claim.

We have heard learned counsel for the parties.

An insured person has been defined as below:-

"**8. Insured Person** for the purpose of availing benefit of Insured Persons (IPs) Quota for his/her wards shall be, as under:

a) "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/four /three years as on, and immediately preceding the 1st January of the year of admission; and contribution in respect of him/her were paid/payable for not less than 78 days in all the 9/7/5 contribution periods immediately preceding 1st January of the year of admission with the proviso that the return of contribution as provided under Section 44 of the ESI Act read with Regulation 26(a) of the ESI (General) Regulations be filed within 42 days of termination of contribution period to which it relates, during this five/four/three year period. However, if the IP does not fulfil the requirement of minimum of 78 days of paid or payable contribution as above in the specified CPs on account of exigency beyond control of IP, 78 days of paid/payable contribution shall be allowed to reckon from among the 02* contribution periods shown in the tables in Para (4.5) during the five/four/three year period for determining eligibility. The five/four/three year period along with extended period of one year for the purpose eligibility should lie between recorded date of entry into the scheme and critical date for eligibility i.e 1st January of the year of admission.

b) The insured person for the said purpose having five/ four/ three years of continuous insurable employment shall be grouped as Group I/ II/ III respectively.

c) The date of entry into the scheme for calculating the minimum continuous period would be the date of registration available in the IP database of the ESIC as uploaded by the employer in the Web Portal of ESIC.

d) 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.

e) Any period prior to the date of entry described above would not be counted towards the five/ four/ three year period of eligibility for the purpose of availing benefit of insured persons (IPs) Quota.

f) The combined earnings of the IP and

spouse (parents of the applicant) should not exceed Rs.06 (six) lakh per annum."

It is not in dispute that the petitioner's case would come within the ambit of Group III and the reason why her claim has been declined is that for calculating the minimum continuous period, the date of registration available in the I.P data base would be relevant. According to the petitioner she became admitted to the scheme with her employer (respondent no.4) on 1.12.2013 but her date of registration was assigned as 29.1.2014. This is on account of delayed information dispatched by respondent no.4 (her employer) to the Employees State Insurance Corporation. Annexure P-1, the information supplied online indicates so.

Respondent no.4 has filed its reply and explained the reasons for late registration. It is stated that the information was received in December, 2013 when the schools were closed and upon reopening the information was sent to the Corporation which was then uploaded on the web portal.

The question before us is as to whether the ward of the petitioner can be denied the advantage of the quota only on the ground that the registration falls on 29.1.2014 which makes her ward ineligible in terms of requirement of Group III and the period prescribed thereunder even though the petitioner was admitted to the insurance scheme on December, 2013. Merely because the date of registration was on a subsequent date and that too on account of the reason which has already been given by the respondent no.4, would not to our minds, be sufficient to deny the benefit to the petitioner.

We are thus of the opinion that once the petitioner became admissible to the scheme on a date, the registration subsequently, which was dependent on the act of the employer in furnishing the information would not make a dent to the claim of her ward. Besides, we notice that the issue has been considered and decided by Kerala High Court in case no. WP (C) no. 17305 of 2018 titled as **Hari R Nair and another vs. The Director General, ESI Corporation and others** wherein learned singled Judge has observed as below:-

> "70. Section 2(14) defines "insured person", as we have already discussed, as a person who is or was an employee regarding whom contributions are or "were payable" under this Act. It also stresses that because of the contributions thus paid or payable, the employee is entitled to any of the benefits provided by this Act.
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> 71. Let us take the Policy, too. Clause 8(1) defines the 'Insured Person' as an 'employee' who should have been in continuous insurable employment for a minimum period of five/four/three years as on, and immediately preceding, the 1st January, 2018; and the contribution in respect of him/her "were paid/payable" for not less than 78 days in all the nine/ seven/ five contribution periods, immediately preceding 1st January, 2018.
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> 72. Semantically, the expression "paid" refers to a past, completed event; "payable" on the other hand, refers to a future event. But "were payable"

employed both in the Act and the Admission policy, could only refer to an unfulfilled past event. So once an amount became due, it might remain unpaid; unpaid it earns interest, not disqualification. The Corporation's insistence that the amount must have been paid, I am afraid, negates its own definition and its own policy. The Corporation is estopped."

For the afore-stated reasons when the petitioner was clearly admitted to the insurance scheme, the delayed date of registration would not be enough to discard her ward from the benefit of admission under quota of 'Ward of Insured Persons' (IPs), particularly when she is not at fault in submitting information to entitle her to a registration.

Petition stands allowed.

'Ward of IP certificate' provisionally granted to the petitioner shall be made absolute.

(Mahesh Grover)
Judge

24.08.2018 **(Mahabir Singh Sindhu)**
rekha **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No