

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.9107 of 2020

and

W.M.P.No.11102 & 11104 of 2020

Dr.K.Aishwarya

... Petitioner

Vs.

- 1.Union of India,
rep by its Principal Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi - 110 011.
- 2.The Employees State Insurance Corporation/College,
rep by its Assistant Director General, Medical Division IV,
HQRS Office, Panchadeep Bhavan, CIG Marg,
New Delhi - 110 002.
- 3.ESIC Medial College & PGIMSR,
rep by its Dean, Ashok Pillar Road,
K.K.Nagar, Chennai - 600 078.
- 4.Tamil Nadu Medical Council,
rep by its Registrar, No.914, Poonamallee High Road,
Arumbakkam, Chennai.
- 5.The Selection Committee,
Directorate of Medical Education,
162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
- 6.The Medical Council of India,
rep by its Secretary,
Pocket 14, Sector 8, Dwaraka,
Phase - 1, New Delhi - 110 077.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Office Order No.03/2019 dated 03.05.2019 vide No.L-11/12/3/2018-(Bond)/ME Cell of the second respondent by which the petitioner has been appointed as ESIC Junior Resident under ESI Residency Scheme on the basis of the additional criteria for execution of a bond including the surety bond executed by petitioner's parents in prescribed format for compulsory 5 year service in Hospitals run and administered by 2nd respondent Corporation and quash the same and consequently forbear 2nd and 3rd respondents from enforcing the bond/surety bond executed by petitioner and the petitioner's Parents respectively.

For Petitioner : Mr.Haja Mohideen Gisthi for
T.K.S.Gandhi

For respondent's : Ms.Nithila Vani,CGC for R1
Mr.T.N.C.Koushik
Standing Counsel for RR2 & 3
P.S.Sivashanmugha Sundaram,
Special Govt.Pleader
For R4 and R5
V.P.Raman for R6

ORDER

The matter is taken up through web hearing.

2.This writ petition is filed seeking the following prayer;

"To call for the records pertaining to the Office Order No.03/2019 dated 03.05.2019 vide No.L-11/12/3/2018-(Bond)/ME Cell of the second respondent by which the petitioner has been appointed as ESIC Junior Resident under ESI Residency Scheme on the basis of the additional criteria for execution of a including the surety bond executed by petitioner's parents in prescribed format for compulsory 5 year service in Hospitals run and administered by 2nd respondent Corporation and quash the same and consequently forbear 2nd and 3rd respondents from enforcing the bond/surety bond executed by petitioner and the petitioner's respectively."

3.The petitioner is presently working as Junior Resident under ESI Residency Scheme, after having completed her MBBS in the third respondent/Medical College. The grievance of the petitioner is that she is required to compulsorily work for a period of 5 years, as service bond was executed by her under compulsion to serve for the Corporation after graduation.

4.According to the petitioner such execution of bond is contrary to Fundamental Rights and also contrary to the provisions of the Act governing the Corporation. She has also cited some decisions of Karnataka High Court granting protection to the petitioner against invocation of bond by the Corporation.

5.This Court finds that the third respondent Corporation falls within the Jurisdiction of Central Administrative Tribunal and any matter pertaining to service conditions is amenable to the jurisdiction of the Central Administrative Tribunal. The counsel appearing for the ESI Corporation has also acknowledged the fact that a Notification was issued in this regard and all service matters pertaining to the Corporation would be dealt with only by the Central Administrative Tribunal.

6.Ms.Nithila Vani, entered appearance for R1, Mr.T.N.C.Koushik, Standing Counsel appeared for Respondents 2 & 3, Mr.V.P.Raman, learned counsel entered appearance for R6 and P.S.Sivashanmugha Sundaram, learned Special Government Pleader entered appearance for R4 and R5.

7.The learned counsel for the petitioner insisted that this Court has intervened in similar matters and this matter being a pre-recruitment, need not go before the Central Administrative Tribunal.

8.This Court is not inclined to accept such submission, as the claim of the petitioner is only in relation to her service condition, which condition may be justified or not, but it is only the Tribunal which can deal with the issue and not this Court. Even in matters of pre-recruitment stage, claiming employment in Central Government or notified Central undertakings, any aggrieved person can approach the Central Administrative Tribunal after its formation in 1985 under the provisions of the Administrative Tribunals Act, 1985.

9.In the above circumstances, this Court is unable to persuade itself to entertain the writ petition and accordingly, the writ petition stands dismissed as not maintainable. Connected miscellaneous petitions are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary,
Union of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi - 110 011.
- 2.The Assistant Director General,
Employees State Insurance Corporation/College,
Medical Division IV,
HQRS Office, Panchadeep Bhavan, CIG Marg,
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+1cc to the Government Pleader Sr.24976

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srg 14/08/2020