

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE MRS.JUSTICE R.HEMALATHA

WP.No.25153 of 2019 &  
WMP.No.24716 of 2019

1.Employees State Insurance Corporation,  
Rep. by the Director General,  
ESIC Headquarters Officer,  
Panchdeep Bhavan,  
CIG Marg, New Delhi - 110 002.

2.The Joint Director (Recruitment),  
Employees State Insurance Corporation,  
ESIC Headquarters Office,  
Panchdeep Bhavan,  
CIG Marg, New Delhi - 110 002.

3.The Deputy Director (Recruitment),  
Employees State Insurance Corporation,  
ESIC Headquarters Office,  
Panchdeep Bhavan,  
CIG Marg, New Delhi - 110 002.

4.ESIC Medical College & PGIMSR,  
By its Dean,  
K.K.Nagar, Chennai - 78.

... Petitioners

Vs.

Dr.Bhanumathi Giridharan,  
(Dr.S.R.Bhanumati S Rajappa as per SSLC),  
Associate Professor, Dept. of General Surgery,  
ESIC Medical College & PGIMSR,  
K.K.Nagar, Chennai - 600 078.

... Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India, praying to issue a writ of certiorari,  
calling for the records of the Central Administrative Tribunal,  
Madras Bench pertaining to the order passed in  
OA/310/00918/2016, dated 23.01.2019.

For Petitioners : Mr.K.Prabhakar  
For Respondent : Mr.T.Srinivasa Mohan  
for M/s.TVJ Associates

ORDER

(Order of the Court was made by R.HEMALATHA, J.)

This Writ Petition is against the order dated 23.01.2019 in OA.No.918 of 2016 on the file of the Central Administrative Tribunal, Madras Bench.

2. In brief, the minimal facts of the case are that a notification dated 30.09.2015 for filling up various teaching posts on direct - recruitment basis was issued by the Employees State Insurance Corporation (ESIC), the first petitioner herein. The respondent Dr.Bhanumathi Giridharan @ Dr.S.R.Bhanumati S Rajappa (as per her SSLC Record) was one of the applicants for the post of Associate Professor and her candidature was found to be ineligible as mentioned in the letter dated 31.05.2015 signed by the third petitioner. The reason mentioned against her name was that "details of publication is not provided". According to the notification, the requisite work experience for the post of Associate Professor was mentioned as follows:

"02.Associate Professor:-.....

Experience:- Five years teaching experience as Lecturer or Assistant Professor in a recognized medical college in the concerned specialty.

Note:-

Four years teaching experience as Assistant Professor in the concerned specialty in a recognized medical college with minimum of two research publications in indexed or national journals....."

Aggrieved over the communication declaring her as ineligible, the respondent approached the Central Administrative Tribunal, Madras Bench vide OA/310/00918/2016. The Central Administrative Tribunal, Madras Bench initially vide an interim order dated 16.06.2016, allowed the respondent to appear in the interview with a declaration to keep the result in a sealed cover. Therefore, the respondent was allowed to participate in the interview and her result was kept in a sealed cover. The Central Administrative Tribunal, Madras Bench in its final order directed the petitioners to open the sealed cover and afford the appointment to the respondent if found fit and suitable. The main reasoning of the Central Administrative Tribunal, Madras Bench while delivering the final order was that the respondent

had an experience of five years which did not necessitate the submissions of two research publications as required for candidates with just four years of work experience. In this Writ Petition, the aforesaid final order has been challenged citing many reasons for the ineligibility of the respondent.

3. Mr.K.Prabhakar, learned counsel for the petitioners would contend that the minimum qualifications for the appointment of Teachers in Medical Institutions (Amendment Regulations 2009) was notified on 24.07.2009, in which, for the post of Associate Professor, four years experience as Assistant Professor in the concerned subject in a recognized Medical College and minimum of two research publications in two indexed / national journals were mandatory. However, it was contended that an amendment was again made to the aforesaid regulations on 15.12.2009 which provided a transitory period of four years with effect from 24.07.2009 for those who were Assistant Professor but did not possess the two research publications. It was also the contention of the learned counsel for the petitioners that the respondent's past service in two private Medical Colleges and the contractual engagement in the ESIC Medical College do not bestow on her any special preference and she has to be necessarily considered along with others in this direct recruitment process. It is also his contention that one of the medical colleges, in which, she served earlier, did not even have a letter of permission for Post Graduate degree course till the year 2011 and with such questionable credentials, the act of the Tribunal in accepting a letter dated 28.11.2016 from Medical Council of India confirming the eligibility of the respondent to the post of Associate Professor was totally in contravention to the regulations of Medical Council of India. Further, it was also pointed out by the petitioners' counsel that she had applied for the post of Associate Professor, General Surgery and Professor, General Surgery in the fourth petitioner's Medical College & Hospital in two different names namely Bhanumathi Giridharan for the post of Professor and as S.R.Bhanumathi S.Rajappa for the post of Assistant Professor, which is highly irregular.

4. Per Contra, Mr.T.Srinivasa Mohan, learned counsel for the respondent contended that due to the amendment brought in 2009 regarding the minimum qualification for the post of Associate Professor, a four year transitory period was extended to the Assistant Professor who had four years of teaching experience but did not possess two research publications. It is further contended that the respondent already had four years teaching experience as Assistant Professor and was promoted as Associate Professor in the year 2010 itself in S.R.M. Medical College & Hospital Research Centre. Thus, she fell in the exempted category as per this amendment and therefore, the petitioners

erred in declaring her candidature as ineligible. The further contention of the learned counsel was that the only reason for finding the applicant / respondent as ineligible was the lack of two research papers and every other reason listed out now in this petition needs to be treated as an after thought. Further, it is very clear that the respondent has worked as an Associate Professor for more than four years on permanent basis and for a year on contractual basis. It is further contended that based on the work experience of the respondent, Medical Council of India had certified separately that she is eligible for the post of Associate Professor in any Medical College in India.

5. From the aforesaid submissions of both the counsels, the issue to be decided boils down to whether a non-possession of two research publications would make the respondent ineligible for the post of Associate Professor in the fourth petitioner's Institution. It is true that amendments have been made to the Minimum Qualification for Teacher's Institution and Regulations, 1998, time and again so as to suit the fast changing needs to maintain a prescribed standard for the teaching profession in Medical Colleges. It is also clear that the respondent who was allowed to appear in the interview held on 17.06.2016 for the selection for the post of Associate Professor was declared qualified in the interview vide the order dated 09.05.2017 of the third petitioner. However, the same order qualified the selection as "shall be subject to the final decision on her eligibility for the post of Associate in General Surgery". It is also strange that none of the objections raised by the petitioners in this Court except for the non-possession two research publications was ever raised in the earlier forum. The petitioners have also questioned the letter dated 28.11.2016 issued by the Medical Council of India addressed to the fourth petitioner which categorically stated that the respondent is eligible for the post of Associate Professor in any Medical College in India. On the one side, the petitioners have conveniently stated that the orders of the Central Administrative Tribunal was in contravention to the guidelines laid down by the Medical Council of India and on the other, disputed the contents of the letter of the Medical Council of India. It tantamount to double speak on the same aspect.

6. It is also intriguing that the respondent having completed five years of service as Associate Professor itself, is found ineligible for the same post by the petitioners. This defies logic. The contention of the respondent is that since she completed four years of service as Assistant Professor way back in 2009 itself, she was very much eligible for the transitory period of four years afforded to those who did not possess the two research papers, even if it is assumed that her service was only for four years. This contention is acceptable

and has substance. We, therefore, conclude that the respondent is eligible for the post of Associate Professor in this fourth petitioner's Institution.

7. The learned counsel for the petitioners has expressed the apprehension that any order favouring the respondent may open the flood gates for many other ineligible candidates to enter the teaching profession without the prescribed minimum qualifications. The facts of this case are unique and we opine that this case cannot be construed as a precedent and the verdict in this case pertains to the respondent alone.

8. In the result, the Writ Petition fails and is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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5.The Central Administrative Tribunal,  
Madras Bench.

+1 cc to M/s.T.Srinivasa Mohan, Advocate Sr.No.

WP.No.25153 of 2019 &  
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NMI (CO)  
RMP (20/10/2020)