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

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Decision delivered on: 21.12.2021+ **W.P.(C) 14781/2021 & CM Nos. 46508-10/2021**

ESIC MEDICAL LABORATORY TECHNOLOGISTS
ASSOCIATION AND ANRPetitioners

Through: Mr Joby P. Varghese, Adv.

versus

THE DIRECTOR GENERAL EMPLOYEES STATE INSURANCE
CORPORATIONRespondent

Through: Mr Shlok Chandra, Adv.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE TALWANT SINGH****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No. 46508/2021**

1. Allowed, subject to just exceptions.

W.P.(C) 14781/2021 and CM Nos.46509-10/2021

2. Issue notice.

2.1. Mr Shlok Chandra accepts notice on behalf of the respondent.

2.2. Mr Chandra says that he does not wish to file a counter-affidavit in the writ petition, in view of the order that we propose to pass.

3. Thus, with the consent of counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition is directed against an interlocutory order dated 10.12.2021, passed by the Central Administrative Tribunal, Principal Bench,



New Delhi [in short “ the Tribunal”] in O.A. No.2865/2021.

4.1. A perusal of the impugned order dated 10.12.2021 shows that notice in the original application i.e., O.A. No. 2865/2021 has been issued. The Tribunal has fixed the matter, on 05.01.2022, to consider the petitioners’ prayer for grant of interim relief.

5. Mr Joby P. Varghese, who appears on behalf of the petitioners, says that, the respondent’s reliance on the order of the Karnataka High Court dated 30.07.2021, passed in W.P(C)3343/2020, is misplaced, as the direction issued in that judgment was confined to one single vacancy, which had arisen in the post of Lab Assistant.

5.1 According to Mr Varghese, the larger issue as to whether promotees should be appointed to the subject post or the appointment should take place via direct recruitment was raised in W.P.(C) 3018/2000 titled ***Common Cause H.D Shourie vs Union of India & Ors.***

5.2 Mr Varghese says that, while the aforementioned writ petition was pending, the Central Government took a decision *vis-à-vis* hospitals under its sway that, for the post of Lab Assistant, the mode of appointment would be direct recruitment looking at the special skills that are required in the concerned area.

5.3. Mr Varghese says that therefore, the respondent is required to amend its Recruitment Rules, in line with the terms of engagement that has been stipulated by the Central Government.

5.4 In this context, Mr Varghese has placed reliance on Section 17(2) of the Employees State Insurance Act, 1948 [in short “the ESIC Act”].

5.5. To our minds, these are aspects, which the Tribunal would have to examine and adjudicate upon, after hearing both sides.



6. Therefore, the writ petition is disposed of with the request to the Tribunal that, the application for interim relief be taken up on the date already fixed i.e., 05.01.2022. If for any reason, the matter cannot be heard on the said date, it would be heard and disposed of on a date, which is proximate to the date mentioned above.

7. In the meanwhile, in case, a Departmental Promotion Committee (DPC) is convened for the purposes of promotion, that process will stand over beyond the date fixed before the Tribunal i.e., 05.01.2022. It is made clear, though, that this direction is issued without prejudice to the rights and contentions of the respondent.

8. Needless to say, nothing stated hereinabove will impact the merits of the case.

9. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 21, 2021/nk

[Click here to check corrigendum, if any](#)