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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 02nd May, 2022*
+ W.P.(C) 5776/2020 & CM APPLs. 20873/2020, 20875/2020
DR. REKHA DUTT Petitioner
Through: Mr Biraja Mahapatra, Advocate
versus

EMPLOYEES STATE INSURANCE CORPORATION
& ANR Respondents
Through: Mr Yakesh Anand, Ms Sonam
Anand and Ms Deepsikha
Sansanwal, Advocates for
ESIC.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The respondents issued an Advertisement in October 2015, proposing to fill up various posts in the field of Medicine. One such post was Associate Professor at Community Medicine in ESIC Medical College at Joka, Kolkata (West Bengal). The applicant uploaded her application and was invited for an interview. The results of the examination were declared on 24.05.2016. The name of the applicant did not figure therein. After unsuccessfully undertaking some correspondence with the respondents, the applicant filed this O.A.



2. The applicant contends that she fulfilled all the eligibility conditions prescribed for the post, and was shortlisted for the interview; and though she had fared well therein, she was not selected for the post she had applied for. She contends that the requirements to be eligible for the concerned post are in two parts, namely, educational qualifications and experience; and that she fulfilled both, i.e. educational as well as experience criterion.

3. Respondents filed a detailed counter affidavit. It is stated that though there is no dispute as to the possession of educational qualifications, however the applicant did not have the prescribed experience. They submit that though the applicant pleaded that she has the experience as well as publication of research papers to her credit, she did not furnish copies of the same for comparison and verification; and even if they have been published, it was not in the journals of National Associations or Societies, as mentioned in the Advertisement.

4. The learned counsel for the petitioner further contends that since the petitioner qualified in terms of clause (a) of the advertisement regarding eligibility criterion, i.e. she has teaching experience of 5 years as Lecturer/Assistant Professor in a recognized medical college in the concerned specialty, the alternate qualification mentioned in clause (b) was not necessary to be considered. She had filled up the form putting in both the qualifications. In the form she had given details of her qualification under both the clauses (a) and (b). It will be of use to reproduce the experience criteria and the experience details given by her and the same is as under:-



सुशांती २०१९ बीम विमा Employees State Insurance Corporation Health & Life Insurance for Employees		IP REG VIP	ESIC Employees State Insurance Corporation	बी.डी.एम्.ए.ए.बी.बी. Billing, Insurance & Employee Health www.esic.co.in				
RECRUITMENT OF TEACHING FACULTY - PROFESSOR, ASSOCIATE PROFESSOR & ASSISTANT PROFESSOR OF ESIC CORPORATION, IMPORTANT INSTRUCTIONS FOR THE CANDIDATES								
Post applied for:-	Associate Professor	Registered Reference No.:-	172001101471					
Name:-	ASHITA DUTTA	Father's Name:-	GURU DAS BHAGAT					
Email ID:-	ashita_dutta1971@gmail.com	Mother's Name:-	VEDYA WATI BHAGAT					
Mobile Number:-	8861200244	Gender:-	Female					
Category:-	GEN	Date of Birth:-	14/05/71					
Marital Status (Married/TWN)	Yes	Nationality:-	Indian					
Professional Experience	Yes	Speciality	General Medicine					
College Name	PGIMER JOKA							
Qualification Details								
Sl. No.	Subject	Institute/University/Board & Year	% of Marks / Grade	Year of Passing				
12th	EMG, IP, BANGSHET SCIENCE, MATHEMATICS, SOCIAL SCIENCE, MUSIC, GURU PURANAM	CENTRAL BOARD OF SECONDARY EDUCATION	78	1987				
10th	ANGLO ENGLISH, SCIENCE, HISTORY, GURU PURANAM	CENTRAL BOARD OF SECONDARY EDUCATION	81	1989				
Postgraduate (Medical)	MEDICAL SCIENCES	PURUMA UNIVERSITY PATANA	88	1993				
Postgraduate (MD)	COMMUNITY MEDICINE	PURUMA UNIVERSITY PATANA	87	1998				
Other 1)				0				
Other 2)				0				
Other 3)				0				
Experience Details								
Name of Employer	From	To	Position held	Experience				
				YY	MM	DD		
GOVT MEDICAL COLLEGE FOR PATANA	2011/1/2008	2011/1/2008	JUNIOR RESIDENT	3			Teaching	Yes
GOVT MEDICAL COLLEGE AND HOSPITAL CHANDIGARH	12/04/2008	21/02/2010	SENIOR RESIDENT	1	00		Teaching	Yes
PAJMAHSHEE OR D Y PATIL MEDICAL COLLEGE NAWI MUMBAI	01/03/2010	06/02/2012	ASSISTANT PROFESSOR	1	11		Teaching	Yes
PAJMAHSHEE OR D Y PATIL MEDICAL COLLEGE NAWI MUMBAI	20/12/2014	18/02/2016	ASSISTANT PROFESSOR	1	3		Teaching	Yes
PAJMAHSHEE OR D Y PATIL MEDICAL COLLEGE NAWI MUMBAI	20/12/2016	10/07/2018	ASSOCIATE PROFESSOR	1	5		Teaching	Yes
TAJPORE MEDICAL COLLEGE AND HOSPITAL CHANDIGARH	01/08/2018	06/11/2019	ASSOCIATE PROFESSOR	1	3		Teaching	Yes
TAJPORE MEDICAL COLLEGE AND HOSPITAL CHANDIGARH	01/11/2019	16/04/2020	PROFESSOR	4			Teaching	Yes
ESIC MEDICAL COLLEGE JOKA	ON CONTRACT	18/04/2019	03/11/2019	PROFESSOR	3	7	Teaching	Yes
ESIC MEDICAL COLLEGE JOKA	ON CONTRACT	18/04/2019	03/11/2019	PROFESSOR	3	7	Teaching	Yes



5. A bare perusal of the form filled by the petitioner reveals that she met the experience criterion as mentioned in the Advertisement, as reproduced above.

6. The respondents have rejected her candidature on the ground that she did not meet the experience criterion under clause (b) of the Recruitment Rule. Surely, the respondent would not lose sight of the fact that it was significant qualifier “Either/Or;” i.e. the candidate should have qualified either of the two criteria of experience. Insofar as the petitioner qualifies under clause (a) that is five years’ teaching experience, she meets the minimum criteria.

7. The petitioner’s application form also shows that she has taught in the position of Assistant Professor from 01.08.2001 till 06.11.2012 in various colleges for various periods. One continuous period was from 13.07.2004 till 19.07.2010 i.e. a period of almost six years.

8. Therefore, the petitioner had continuous teaching experience of six years which is more than the required experience criteria given in clause (a) of the Advertisement. The experience criterion provided under clause (a) reads as under:-

a. “Five years teaching experience as Lecturer or Assistant Professor in a recognized medical college in the concerned speciality. (copy the experience criteria from the impugned order) ...”

9. The experience details provided by the petitioner are as below:-

“The petitioner with MBBS and MD in Community Medicine, from Punjab University, Patiala, has been in the profession of teaching first as a Junior Resident in Government Medical College, Patiala from November



1995 to 29.11.1998 and then as a senior Resident at Government Medical College, Chandigarh up to 21.02.2001. She was an Assistant Professor at Padmashree Dr D Y Patil College, Navi Mumbai between 01.08.2001 and 20.07.2002 and again between 30.07.2004 and 19.10.2008. She was promoted to the post of Associate Professor in the said institution on 20.10.2008 and continued up to 19.07.2010. She was Associate Professor with Tagore Medical College and Hospital, Chennai and as professor between 7.11.2012 and 16.04.2013. She then joined the Respondent Institution as a Professor on 19.04.2013 on contract basis...”

10. Insofar as the petitioner meets the first criterion, one does not require to look into the alternate experience apropos her publications, etc. Rejection of her publications as not having been published while she was an Assistant Professor or the same not being deemed to be as first author would be irrelevant if she satisfies the first criterion. This issue has not been considered in the impugned order although it was argued by the petitioner as under:-

“...(xi) Interest of justice calls for exercise of the Jurisdiction by this Hon'ble Tribunal in favour of the Applicant and against the Respondent...”

11. Therefore, the dismissal for meeting the eligibility criterion under clause (a) is without reason and is unsustainable. The impugned order dealt only with her qualification under condition (b) of the experience clause. The impugned order is therefore, set aside. The petitioner will be considered as having met the experience criteria and her appointment will be processed accordingly.



12. At this stage the learned counsel for the petitioner states that the petitioner is aggrieved by the observations made in the impugned order apropos her research papers. The petitioner says that the observations belittle the quality of her paper and the research put into it which has been published in indexed journals; the she contends that the journals would not have considered her articles for publication if they did not meet the minimum standards of publication of research papers; factually, also the observations made in para nos. 8, 9 & 10 of the impugned order are erroneous; regarding the article "*Prevalence of Anemia among Adolescent Girls in Rural Area of Raigad district, Maharashtra*" in impugned order opines as under:-

"...

It is necessary to note the view taken by the respondents in the counter affidavit in this behalf. In para 4, it is stated as under:

"It is pertinent to mention that Dr. Rekha Dutt does not possess any Research publications published in indexed journal as First Author."

It is clearly mentioned that the applicant did not possess the requisite research publications nor they were published in the journals of the prescribed standard. The applicant did not contradict that the publications to her credit are not of prescribed standard and that they were not published in the journals at the national level, as mentioned in the Advertisement.

9. In the rejoinder, except stating that the applicant made three research publications, she did not state that the journals are of the same standard, as



mentioned in the Advertisement. She has also enclosed the copies of the so called research publications. We are not the specialist to assess the standard or level of the publications. However, a layman would have an idea about the content and size of the research papers. Firstly, the research is to offer a deep insight into a hitherto unknown field and secondly, it should be according to a detailed methodology, chosen for the purpose.

10. It is evident that the 1st research paper is "Prevalence of Anemia among Adolescent Girls in Rural Area of Raigad District, Maharashtra". This is hardly in one closely typed page. The 2nd one is "Kangaroo Mother Care - an appropriate Technology to reduce Neonatal Mortality Rate in Developing Countries". Here again, if we exclude the introduction and abstract part of it, the article is of hardly one page. The 3rd research paper is "Serological Survey of Tetanus Antibody level in Adolescent Girls in Rural and Urban Area of Patiala, Punjab". Here also, the discussion consists of half page and rest of it comprises of abstract, introduction, material, results and references. In none of them, there exists any methodology in detail nor do they furnish the details of the research undertaken by the researcher. The post involved is Associate Professor, which is immediately below the post of Professor. It is required to be filled with candidates of adequate competence. If there are better candidates than the applicant; and if they are selected, it would not be a case of any injustice to the applicant..."

13. A perusal of the records attached as Annexure 6 reveals to the contrary. The first article runs into four pages with elaborate data in three tables, reference to other published articles, study materials, discussions on the subject and conclusion. Similarly, the second article



also runs into three pages with detailed reference to previous publications and technical data. The third article is also three pages and these articles have been published in the Indian Journal of Preventive Social Medicine and in National Journal of Research in Community Medicine.

14. The remarks and observations regarding the quality of the petitioner's research paper discredit her research. Peer review or review by an expert group may well have been sought to justify any observation regarding the quality and research value of the articles. Till that is done, the remarks may not be prudent. Care, caution and sensitivity is expected in adjudicatory orders lest some expressions and observations, unintentionally lend to demeaning and befitting a person's efforts and/or discourage a researcher whose professional reputation may suffer; causing the person anguish and distress. Judicial patience and restraint are the traits of judicial authority. In *A. M. Mathur v. Pramod Kumar Gupta and others*, (1990) 2 SCC 533 the Supreme Court has emphasised the need for and has held that judicial restraint and discipline are necessary for the orderly administration of justice and observed as under:-

“13. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other coordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.”



“14. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.”

16. In view of the above, the observations in paragraph 10 of the impugned order *apropos* the articles are premature and unjustified, and are therefore, set aside.

17. The learned counsel for the petitioner submits that this largely addresses the petitioner's concern and redeems her reputation as a professional; that she does not want to be considered for the position of Assistant Professor because she is already working as a Professor at All India Institute of Medical Sciences, New Delhi.

18. The petition is disposed-off in the above terms.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

MAY 2, 2022

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