



2024 : DHC : 543



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

% Judgment delivered on: 24.01.2024

+ W.P.(C) 999/2024

VARUN ALWADHI

..... Petitioner

versus

EMPLOYEES STATE INSURANCE
CORPORATION AND ORS

..... Respondent

Advocates who appeared in this case:For the Petitioner : Ms. Chhavi Arora and Mr. Ashok
Kumar, AdvocatesFor the Respondent : Mr. Sholk Chandra, Standing Counsel
with Mr. Sankalp Sharma and Ms.
Shashank Kesarwani, Advocates
Mr. Dinesh Soni, SSO-ESIC
Department**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 4135/2024**

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of

W.P.(C) 999/2024 & CM APPL. 4134/2024 (Interim Relief)

3. This is a writ petition under Article 226 of the Constitution of India seeking *inter alia* following directions:-

A) Issue a writ of mandamus or any other appropriate writ order/direction in the nature of writ of mandamus to the



Respondent no. 1 & 2 to accept and consider the Application of the Petitioner and further to allow him to appear in Interviews which are presently going on from 09/01/2024 to 03/02/2024 for the post of Assistant Professor for ESIC PGIMSRs, and ESIC Medical Colleges, as the Petitioner is eligible as per rules for the said post in furtherance of the advertisement dated 16.06.2022 in the Interest of Justice; and

B) Issue a writ of mandamus or any other appropriate writ order/ direction in the nature of writ of mandamus to the Respondent no. 1 to allow the Petitioner to appear in the Interviews for the post of Assistant Professor in the speciality of Paediatrics in the Interest of Justice; and

C) Pass any other order(s) to direct the Respondents for granting the cost of litigation to the Petitioner; ...”

4. The respondent no.1- Employees State Insurance Corporation had invited applications *vide* advertisement dated 16.06.2022 for filling up the Teaching Faculty Positions of Assistant Professor for ESIC PGIMSRs and ESIC Medical Colleges on direct recruitment basis through open applications for various specialties including Paediatrics. It is stated that there were 33 vacancies in the broad specialty of Paediatrics.

5. The petitioner, following up the advertisement, had applied for the post of Assistant Professor (Teaching Faculty in the Paediatrics Specialty).

6. The respondents had, *vide* the notice dated 15.11.2023 published the list of candidates selected for interview and made out a schedule of interview to be conducted from 09.01.2024 through till 03.02.2024. It is further submitted that the petitioner's name was included in the list of



“*Not Eligible Candidates*” for the aforesaid post and the petitioner was shown to be ineligible for the said post on account of “*Less Experience +1 Certificate of Experience Not Attached*”. Subsequently, the petitioner states that he had been sending representations, however, without any response from the respondents.

7. Ms. Chhavi Arora, learned counsel appearing for the petitioner submits that the candidature of the petitioner has been canceled on a wrong premise and incorrect calculation by the respondents, in that, she submits that in case the relevant experience is calculated, which is placed by the petitioner at page 65, the petitioner would be completing 1095 days to be exact, which would convert into three years.

8. Learned counsel for the petitioner submits that the calculation by the respondent no.1-ESIC seems to be in error since it shows experience to be short only by one day. Ms. Arora also submits that the Scrutiny Committee had noted that the experience is short by two days whereas the Scrutiny Report handed over the Bench today by learned counsel for respondent-ESIC indicates that the experience is short by one day. The scrutiny report is taken on record.

9. Ms. Arora submits that this error in calculation cannot be attributed to the petitioner and the correct calculation is 1095 days which would translate into three years, which is the requisite experience as per the advertisement. She submits that in any case, the petitioner is seeking only consideration for the purpose of appearing in the interview alone and as such, the right of the petitioner for consideration cannot be defeated.

10. The experience certificates are already on record, which were also



before the concerned authority and without considering the same, the respondent no.1 has cancelled the candidature, as stipulated above.

11. After having considered the arguments of Ms. Arora, learned counsel for the petitioner as also after having perused the calculations made at page 65, it appears to this Court that there is a slight error committed by the respondent while scrutinizing the relevant experience and the teaching certificates of the petitioner.

12. As such, this Court is of the considered opinion that the total calculation comes to about 1095 days, translating into three years, which makes the petitioner eligible to take part in the interview.

13. Ms. Arora, learned counsel submits that the interviews for the purpose of filling up the post in the Paediatrics Specialty are commencing from 27.01.2024.

14. In view of the above, the petition is allowed. The respondent is directed to permit the petitioner to participate in the interview process stated to be commencing from 27.01.2024.

15. Mr. Shlok Chandra, learned Standing Counsel appearing for the respondent ESIC, will inform about the aforesaid formalities required for the purpose of attending interview to the petitioner by 25.01.2024.

16. It is made clear that this Court has not considered the other issues on merit.

17. The present petition is disposed of in view of the above terms.

18. Order *dasti* to both the parties under signature of Court Master.

TUSHAR RAO GEDELA, J.

JANUARY 24, 2024

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