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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 03.05.2024***

+ W.P.(C) 2452/2024 & CM APPL. 10077/2024 -Stay.

EMPLOYEE STATE INSURANCE CORPORATION Petitioner
Through: Mr. Murari Kumar, Adv.

versus

NARENDRA KUMAR VERMA Respondent
Through: Ms. Aanchal Anand, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter 'the Tribunal') in O.A. No. 1670/2018, which order though undated is stated to have been pronounced on 20.09.2023.
2. Vide the impugned order, the learned Tribunal has allowed the original application preferred by the respondent by quashing the order dated 20.03.2018 whereby the offer of appointment to the post of Nursing Orderly made to him was cancelled by the petitioner. The learned Tribunal has consequently directed the petitioner to appoint the respondent to the aforesaid post within four weeks and grant him all consequential benefits except the actual back wages.
3. We may begin by noting the brief factual matrix as emerging from the



record.

4. Upon an advertisement being issued by the petitioner on 05.12.2015, the respondent applied for the post of Nursing Orderly and duly appeared in the exam conducted for the said post. Based on his performance in this exam, the respondent was issued an offer of appointment on 01.06.2017. However, before the respondent could join service, this offer of appointment was cancelled vide order dated 20.03.2018 on the ground that the one year experience that he was holding was not in a hospital or a nursing home. It may be noted that the experience certificate which the respondent had submitted to show that he had the requisite experience was issued by the Chief District Medical Officer, Shahdara District, Delhi. As per this certificate the respondent had worked as a Nursing Orderly from 01.03.2014 to 30.04.2014 and 01.05.2014 to 31.05.2015 in a dispensary at the Shahdara District under the Directorate of Health Services, which, as per the petitioner, did not meet the requirement of the eligibility criteria prescribed under the recruitment rules.

5. Being aggrieved, the respondent approached the learned Tribunal which, as noted hereinabove, has allowed the original application. It is in these circumstances that the petitioner has approached this Court.

6. The sole submission of the learned counsel for the petitioner is that as per the recruitment rules, the respondent was required to have one year experience in handling and dressing wounds in a government approved/registered nursing home or hospital but the experience certificate produced by him pertains to a dispensary and therefore, he did not meet the eligibility criteria. He, therefore, prays that the impugned order be set aside.

7. On the other hand, Ms. Aanchal Anand, learned counsel appearing on



behalf of the respondent, supports the impugned order and submits that the learned Tribunal has correctly appreciated that the respondent was engaged by the Delhi Health Services and merely because he was at that point of time working in a dispensary did not mean that he did not possess the necessary work experience. By drawing our attention to various posting orders issued by the Directorate of Delhi Health Services in respect of similarly situated persons, she submits that Nursing Orderlies engaged in dispensaries run under the Delhi Health Services are routinely transferred to different hospitals and vice versa. Furthermore, the petitioner itself is following this practice and is routinely transferring the Nursing Orderlies from ESIC run dispensaries to ESIC run hospitals. She, therefore, prays that the writ petition be dismissed.

8. Before dealing with the rival submissions of the parties, we may note the relevant extracts of the impugned order which read as under:-

“6. The candidature of the applicant was cancelled for want of required experience as reproduced in para 2 hereinabove. It is not in dispute that the applicant though has the required experience, however, the same is with respect to a dispensary as against Govt. approved/registered Nursing Home/Hospital. The applicant was offered appointment and in fact he accepted the same in pursuance of the said offer of appointment. Upon the document verification, the respondents have cancelled the candidature of the applicant for the reason explained above. The genuineness of the certificate given by the CDMO, Shahdara District is not disputed.

7. This takes us to the issue whether the experience acquired by the applicant in a Government registered dispensary under the GNCTD would meet the experience required under the advertisement.

8. A public hospital or government hospital is a hospital, which is owned by the government. It is fully funded by the government, and operates solely off the money that is collected from taxpayers to fund healthcare initiatives of the State. To our limited understanding, the dispensary run by the Government Hospital is also a part of the same except that the dispensary primarily deals with Out Patients Department and do not have Indoor Patient facility, however the staff of



dispensary as well as the Hospital run by the Government are inter-changeable.

9. We find that the reason given by the respondents is not justified and is misplaced. Once the genuineness of the certificate acquired by the applicant in Govt. dispensary is not in question, the act of the respondents in Cancelling the candidature of the applicant is arbitrary and uncalled for.

10. In view of the aforesaid observations, the OA is allowed. The communication issued by the respondents dated 20.03.2018 is quashed and set aside. The respondents are directed to appoint the applicant as Nursing Orderly within 4 weeks from the date of receipt of a certified copy of this order. The applicant shall be entitled to all consequential benefits that may include seniority except back wages.

There shall be no order as to costs."

9. From a perusal of the aforesaid, we find that the learned Tribunal has held that a dispensary run by the government hospital is also a part of the hospital and it is for this reason that the staff deployed in a dispensary run by the government and staff in a hospital run by the Government are interchangeable. Before us, learned counsel for the petitioner, has not been in a position to deny that the staff engaged in a dispensary run by the government is often deputed in a hospital and vice versa. In fact, as pointed out by the learned counsel for the respondent, this practice is also being followed by the petitioner in the ESIC run dispensaries and hospitals.

10. In the present case, we find that the petitioner was engaged by the Delhi Health Services and therefore, merely because he was at the relevant time, posted in a dispensary, it cannot be said that he did not have the requisite experience in a government hospital run by the Delhi Health Services. The dispensary in which the respondent was deployed was admittedly being run by the Delhi Health Services and therefore, it was always open for the Directorate of the Delhi Health Services to post the



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respondent to any hospital, if required. It can, therefore, not be said that the respondent did not have the requisite experience.

11. In the light of the aforesaid, we find no infirmity with the impugned order. The writ petition along with the pending application being meritless, is accordingly dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

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