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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 02.05.2024***+ **W.P.(C) 4785/2024 & CM APPL. 19598/2024 -Stay****EMPLOYEES STATE INSURANCE CORPORATION**

..... Petitioner

Through: Ms. Anita Thakur and Mr. Apratim
Animesh Thakur, Advocates

versus

DR. ASHOK KUMAR GUPTA

..... Respondent

Through: Ms. Deeksha Saggi and Mr. Abhishek
Kumar, Advocates**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present petition under Articles 226 and 227 of The Constitution of India seeks to assail the order dated 05.12.2023 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 2801/2023. Vide the impugned order, the learned Tribunal has partly allowed the original application filed by the respondent/applicant by directing that his case for the appointment to the post of Insurance Medical Officer (IMO), Grade-II (Allopathic), be considered in accordance with the relevant rules after granting him the benefit of age relaxation with reference to the date which was notified as the date for determining of upper age limit in the vacancy as on date.



2. Learned counsel for the respondent submit that the impugned order is perverse as the learned Tribunal has failed to appreciate that though the respondent was engaged by the State Government of Gujarat, however, he was neither engaged by the ESIC nor by the Central Government. She, therefore submits that the respondent is not entitled to claim the benefit of age relaxation as per the Advertisement dated 30.08.2013. In support of her plea, she relies on a decision of the Apex Court in **DSSB v. Seema Kapoor (2021) 20 SCC 380**. She therefore prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent appearing on advance notice supports the impugned order and submits that once the Advertisement stated that age relaxation would be granted to employees of the petitioner as also to all Government Servants, the respondent who is, admittedly, an employee of the State Government of Gujarat could not be excluded from the ambit of benefit of the age relaxation and that too when he has already rendered service to the petitioner itself under the ESIC Scheme run by the State of Gujarat. He, therefore prays that the writ petition be dismissed.

4. In order to appreciate the rival submissions of the parties, we may first note the findings of the learned Tribunal in the impugned order. The following extract thereof is as under:-

“8. We have heard the learned counsel for the parties at great length and also gone through the voluminous documents on record. In addition, we have given a careful reading to the order dated 31.07.2018 passed in O.A. No. 4061/2015. We have no doubt in our mind that both the O.As are very closely similar to each other with respect to the facts and circumstances, and more importantly the issue



which is the subject of these O.As. In terms of the relevant provisions of the Recruitment Rules there is categorical provision that upper age limit is relaxable upto five years for employees ESI Corporation and Government Servants. It has been further clarified that this provision has been incorporated in accordance with the Instructions and Orders issued by the Central Government from time to time. Moreover, even the vacancy notification in both the O.As is similar. Therefore, there could be no cause for us to take a divergent view. While we do appreciate the arguments put forth by the learned counsel for the respondents, drawing support from the specific averments made in the counter reply that this provision would be applicable only in case of regular employees and not one who are on ad-hoc or temporary basis, we find that this issue has been discussed and decided thread bare in the order/judgment in O.A. No. 4061/2015. The specific observation of the Tribunal in the said order/judgment reads as under:-

“13. A perusal of the clauses contained in. Annexure A - 1 as well as Annexure R- 1 discloses that nowhere it was mentioned that three years of service of a departmental candidate must be in the form of regular service or in a cadre post. The expression used is "employee of corporation." That the applicant is an employee of ESI Corporation, even now, is beyond any pale of doubt.”

9. In view of what has been discussed and detailed above, the present Original Application is allowed and the respondents are directed that the case of the applicant for appointment to the post of Insurance Medical Officer, Grade- IT, be considered in accordance with the relevant Rules after according him the benefit of relaxation of age, with reference to the date which was notified as the date for determining upper age limit in the vacancy notification. Subject to the such consideration if the applicant is found eligible in all other respects, necessary appointment to the said post shall be offered to him with effect from date the



selected candidates of the Subject vacancy notification have been appointed. However, the benefit of such appointment shall be strictly on notional basis till date he actually assumes charge of the said post. Needless to say the applicant shall be entitled to all necessary consequential benefits as may flow out of this order.

10. The directions contained herein shall be complied with within a period of twelve weeks from the date of receipt of a certified copy of this order.

11. The present Original Application stands allowed in above terms. There shall be no order as to costs.

5. From a perusal of the aforesaid, it is evident that no such plea that the respondent was not a Government employee was taken by the petitioner before the learned Tribunal. In fact, it emerges that the only plea of the petitioner before the Tribunal was that respondent being an *ad hoc* employee could not claim relaxation, as the same was applicable only to regular employees. This plea was rejected by the learned Tribunal and in our view rightly so. The petitioner in our considered opinion could not deny the benefit of age relaxation to an eligible employee only on the ground that he had not been regularised.

6. Now coming to the petitioner's plea that since this age relaxation for employees of the ESIC and Government Servants was to be granted in accordance with the instructions issued by the Central Government, only Central Government employee could not claim the relaxation. We are unable to agree with the aforesaid contention. We find absolutely no merit in the submission of the learned counsel for the petitioner that the employees of a State Government would not be included in the term 'Government Servant'.



We say so, on the basis of a plain reading of the Clause C of the advertisement, which makes it clear that any kind of Government Servant was included within the ambit of the relaxation clause. For the sake of completeness, the said Clause C is reproduced as under:-

C. Age Limit: Not exceeding 30 years as on 07.10.2013. Upper age limit is relaxable upto 5 years for employee of ESI Corporation and Government servants, in accordance with the instructions or orders issued by the Central Govt. Upper age limit is also relaxable to SC/ST/OBC/PWD/Ex-Servicemen & other categories of persons as per rules/instructions of Govt. of India.”

7. In our view, merely on account of a reference in Clause C to the instructions issued by the Central Government would not imply that the ambit of the relaxation was to be confined only to the Central Government Employees and not granted to State Government employees, who are undoubtedly also Government Servants.

8. Adverting to the decision in **DSSB (supra)** relied upon by the learned counsel for the petitioner, we find that the said judgment is very much distinguishable on facts. In the said case, the Apex Court was dealing with the claim for age relaxation of a candidate, who was not a Government Servant but was working in an autonomous body i.e., Municipal Corporation of Delhi. In the present case, once it is the admitted stand of the petitioner itself that the respondent was an employee of the State of Gujarat, it cannot be said that he was not a Government Servant.



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9. We, therefore, find no infirmity in the impugned order. The writ petition being meritless is alongwith the pending application dismissed.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 2, 2024/akr