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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 13930/2018

EMPLOYEES' STATE INSURANCE CORPORATION

..... Petitioner

Through: Ms. Anita Thakur, Adv.

versus

DR ANJNEYA K VERMA

..... Respondent

Through: Mr. Sudhir Kumar Sharma with Mr.
Pranjal Rai, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

01.03.2024

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1. The present petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 31.07.2018 passed by the learned Central Administrative Tribunal (hereinafter 'Tribunal') in Original Application (O.A.) No. 4061/2015. Vide the impugned order, the learned Tribunal has allowed the O.A. preferred by the respondent by directing the petitioner to grant him age relaxation and consider his case for appointment to the post of Insurance Medical Officer, Grade-II (Allopathic).
2. Learned counsel for the petitioner submits that the impugned order is wholly perverse as it is based on an erroneous presumption that the respondent who was working as a Senior Resident at the ESIC Hospital, Indore was to be treated as an employee of the petitioner



organisation and was therefore, as per DoPT's OM dated 27.03.2012 entitled to age relaxation of 5 years in the upper age limit for appointment to the post of Insurance Medical Officer, Grade-II (allopathic). She further submits that even if the respondent's plea, that he had to be treated as an employee of the petitioner, were to be accepted, he did not have the requisite three years service on the cut off date of 07.10.2013, for seeking age relaxation in terms of the instructions issued by the Central Government. She, therefore, prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal has rightly directed the petitioner to grant age relaxation to the respondent. Furthermore, this plea that on account of having less than three years of service, the respondent was not eligible for seeking age relaxation was never raised by the petitioner before the learned Tribunal. He, therefore, prays that the writ petition be dismissed.
4. Having perused the impugned order as also the counter affidavit filed by the petitioner before the Tribunal, we find that even though this plea was specifically taken by the petitioner in para nos 6 & 10 of its counter affidavit, the impugned order does not even refer to the same. We find that in its counter affidavit the petitioner had specifically urged that the respondent having joined the ESIC Hospital as a Senior Resident only on 27.02.2012, he on the cut off date of 07.10.2013 did not possess the requisite three years' continuous service to be eligible for age relaxation in terms of the OM dated 27.03.2012. This plea in our view goes to the root of the matter and



therefore, ought to have been decided by the learned Tribunal before issuance of any directions to the petitioner to grant age relaxation to the respondent.

5. In the light of the aforesaid, we have no other option but to set aside the impugned order and remand the matter to the learned Tribunal for fresh adjudication of the O.A. on merits. The writ petition is, accordingly, allowed by setting aside the impugned order and remanding the matter back to the learned Tribunal for fresh adjudication of the OA on merits, including the petitioner's plea that the respondent was not entitled to any age relaxation in terms of OM dated 27.03.2012.
6. Needless to state, this Court has not expressed any opinion on the rival claims of the parties.
7. List the matter before the learned Registrar of the learned Tribunal on 21.03.2024, for further proceedings as per law.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 1, 2024

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