

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01220/2019
DATED THIS THE 12th DAY OF FEBRUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Hanumantray Madar
 S/o. Peerappa
 Aged about 30 years
 Residing at Jalapura
 Sindagi Taluk
 Bijapur District-586118.

....Applicant

(By Advocate Sri M.Rajakumar)

Vs.

1. Employees State Insurance Corporation
 Regional Office Karnataka
 Panchadeep Bhavan
 No.10, Binny Fields
 Tank Bund Road
 Binnypet, Bengaluru-560 023.
 Represented by its
 Additional Commissioner/
 Regional Director.
2. The Karnataka Nursing and
 Paramedical Sciences Education
 (Regulation) Authority
 Paramedical Board
 No.40/20A Lakshmi Complex
 1st Floor, Fort
 Bangalore-560 002.
 Represented by its
 Special officer
3. The State of Karnataka
 Represented by Under Secretary
 Department of Personnel &
 Administrative Reforms
 Vidhana Soudha (Service Rule-1)
 Bengaluru-560001.

...Respondents

(By Advocates Sri M.Vasudeva Rao, Sr.PC for CG & Sri Yogesh D.Naik for R2)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case are that the 1st respondent issued an online notification dtd.21.1.2019 for recruitment of paramedical and nursing staff for ESIC Medical Education Institutions, Hospitals and Dispensaries in Karnataka Region(Annexure-A1) and had called for applications from eligible candidates for the posts of OT Assistant. The educational and other qualification prescribed for the post of OT Assistant is Senior Secondary/10+2 with Science or equivalent qualification from a recognised Board with one year experience in OT of a recognized hospital. Being qualified and eligible, the applicant submitted his application for the post of OT Assistant. After verification of his application, he was called for writing the competitive examination. After qualifying in the said examination, he was shortlisted for document verification(Annexure-A6). He also received a letter dtd.5.7.2019 from the 1st respondent directing him to appear for document verification on 16.7.2019(Annexure-A7). Accordingly, he submitted all the documents for verification on the said date. When the matter stood thus, there was select list notice dtd.22.8.2019(Annexure-A8) published by the 1st respondent in regard to the applicant stating that 'clarification regarding the educational qualification being sought from State Government'. On seeing the said notice, the applicant personally approached the 1st respondent office where he was informed that a communication is sent to the State Govt. seeking clarification whether the Diploma in OT Technology can be considered as equivalent to Senior Secondary/10+2 with Science(Annexure-A9). The applicant approached the 2nd respondent as he is the competent authority for such clarification, where he was informed that they sent a reply to the 1st respondent clarifying that the Diploma in OT Technology awarded to the applicant is equivalent to the Second PUC as per the order of the Govt. of Karnataka vide

No.DPAR 81 SCR 2017(Annexure-A10&A11). As per the Govt. of Karnataka circular dtd.27.2.2018(Annexure-A12 & A13), 'three years Diploma or two years ITI Course or two years vocational education (JOC/JODC/JLDC) one language course conducted by NIOS and a pass in one educational Subject (distance education) or a Language examination conducted by Pre University Board and a pass in one subject may be considered as equivalent to PUC'. Accordingly, it is material fact that the Diploma in OT Technology which the applicant acquired is equivalent to Second PUC. The 1st respondent failed to appreciate the fact that the applicant has passed Kannada and Chemistry conducted by the Karnataka State Pre University Education Examination Board as required and thus he is qualified and eligible for appointment to the post of OT Assistant. He got the Eligibility Certificate dtd.2.12.2014 issued by the Rajiv Gandhi University of Health Sciences, Karnataka(Annexure-A4). Accordingly, he passed the Bachelor Degree of Science (OT) Technology in the year 2019(Annexure-A5). Having received the clarification as per Annexure-A10, the 1st respondent denied the appointment to the applicant to the post of OT Assistant which is illegal, arbitrary and violative of Articles 14, 16 & 21 of the Constitution. Right to get appointment is a fundamental right as guaranteed under the Constitution. Hence, the entire action of the 1st respondent is irrational and capricious. Therefore, the applicant has filed the present OA seeking the following relief:

"Issue a Writ of Mandamus or any other appropriate writ, order or direction, directing the Respondents 1 to issue appointment order to the applicant to the post of OT Assistant in the ESIC Medical Colleges, Hospitals and Dispensaries as per Annexure-A8 dated 22/08/2019, to meet the ends of justice".

2. The applicant submits that on 11.11.2019, this Tribunal had passed an interim order directing the 1st respondent to keep one post of OT Assistant vacant

for the time being and adjourned the matter to 26.11.2019. Thereafter the 1st respondent has cancelled his candidature vide letter dtd.25.11.2019(Annexure-A17 in MA.878/2019) i.e. one day before the hearing of this case on 26.11.2019 stating that the applicant does not possess the requisite qualification, in spite of the admitted fact that the Paramedical Board has confirmed that his qualification is equal to the qualification prescribed by the 1st respondent. Being deserved and having higher educational qualification than other candidates, he should be issued with appointment order when all the other candidates who are shortlisted are issued with appointment orders. Hence, he prays to treat the said letter dtd.25.11.2019 as non est and for a direction to the 1st respondent to issue appointment order as per Annexure-A8.

3. The respondents, on the other hand, have submitted in their reply statement that when the applicant was called for document verification on 16.7.2019 after qualifying in the written examination for the post of OT Assistant, he submitted documents of SSLC Marks card, Diploma Course certificate-OT Technology, first year certificate course-OT Technology, Diploma course-OT Technology first & final years marks sheet, experience certificates issued by M/s Managuli Hospital and M/s Town Hospital. On verification of documents, it is seen that the applicant did not produce certificate for possessing the qualification 10+2 with Science or equivalent qualification. Instead he submitted certificate of Diploma in OT Technology claiming that it is equivalent to 10+2 or PUC which was referred to Para-medical Board vide letter dtd.5.8.2019(Annexure-R1) and Pre-University Board, Bangalore vide letter dtd.11.10.2019(Annexure-R2) for clarification. The Para-Medical board vide its letter dtd.13.8.2019(Annexure-R3) had confirmed that the Diploma Course in OT Technician is not equivalent to

PUC. When the applicant submitted a letter dtd.4.9.2019 from Para-Medical board wherein it was confirmed that the course in question is equivalent to PUC, to ascertain the genuinity of the said letter, a letter dtd.9.9.2019(Annexure-R4) followed by reminder dtd.20.9.2019(Annexure-R5) was sent to the 2nd respondent who have sent letter dtd.31.10.2019(Annexure-R9) confirming the genuinity. In view of the contradictory information, the 1st respondent referred the matter to PU Board as they are the competent authority to decide in the matter, who vide its letter dtd.5.11.2019(Annexure-R6) had confirmed that Diploma in Para-Medical Courses is not recognised as equivalent to PUC. Therefore, the applicant is not entitled to be selected for the post of OT Assistant as the Diploma in OT Technician possessed by him is not equivalent to PUC as per Annexure-R6.

4. The respondents submit that the applicant has enclosed provisional Degree certificate dtd.13.9.2019 and claimed that he had completed B.Sc. in OT Technology which was neither claimed nor was produced at the time of document verification on 16.7.2019. The qualification is also not admissible for the reason that the said certificate is dtd.13.9.2019 which is after the crucial date i.e. 21.1.2019 for possessing requisite educational qualification as mentioned in the recruitment notification. Therefore, it is clear that qualification as on 21.1.2019 will only be considered for determining eligibility to the concerned post for recruitment. The norms fixed by Rajiv Gandhi University of Health Sciences are only for the purpose of admission to Para-Medical degree courses and it cannot be presumed that the Diploma course done by the applicant is equivalent to PUC just because of his admission to Degree in Para-Medical course. The contention of the applicant that his application for the post of OT Assistant was accepted online relating to educational qualification and eligibility is denied as

mere allowing the applicant for examination neither confer him any right for appointment nor it amounts to acceptance of his qualification. Before applying, candidates are advised to go through the requirements of essential qualification, age etc., and satisfy themselves that they are eligible for the post. When scrutiny is undertaken, if any claim made in the application is not found substantiated, the candidature will be cancelled and the decision of ESIC shall be final. Hence, it is very clear that scrutiny of documents relating to education qualification and other requirements were undertaken at the time of verification of documents on 16.7.2019. The applicant's reliance on Annexure-A12 & A13 is not relevant since it is a circular issued by Govt. of Karnataka for the purpose of recruitment to the post of Jr.Assistant/Second Division Assistant in accordance with Rule 4 of Karnataka Civil Services (Recruitment of Literate Posts) Rules, 1978 which cannot be compared with Recruitment Regulations of the 1st respondent. Even otherwise the circular makes reference to only Diploma Course and not specifically Diploma in Para-Medical Courses. It is pure assumption on the part of the applicant that Diploma in OT Technology is equivalent to PUC. Right to appointment is not a fundamental right and as such the entire action on the part of the 1st respondent is legal, just rational and not violative of Articles 14, 16 & 21 of the Constitution. Therefore, the applicant is not entitled to any relief and the OA is liable to be dismissed with costs.

5. The respondents have filed reply to the MA.878/2019 filed by the applicant stating that on the basis of a letter dtd.13.8.2019 received from Para Medical Board that the Diploma in Paramedical Courses is not equivalent to PUC relying on PU Board decision, the 1st respondent cancelled the candidature of the applicant vide notice dtd.25.11.2019. Hence, they have a strong case to prove

that the applicant is not eligible for selection to the post of OT Assistant and therefore, the MA is liable to be rejected.

6. The 2nd respondent has filed reply statement stating that the Govt. of Karnataka by Circular dtd.27.1.2015 has granted equivalence of three years diploma courses to the Pre University Course. This was further clarified by Circular dtd.27.2.2018. The course held by the applicant is a three years' diploma course. The candidate has to pass SSLC for taking up the course. Hence, letter dtd.4.9.2019(Annexure-A10) is issued to the ESIC Bengaluru stating that the diploma course held by the applicant can be considered as equivalent to II PUC examination. The circular dtd.27.1.2015 & 27.2.2018 were issued by the Govt. of Karnataka. Therefore, it is for the Government to clarify the situation.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant has filed written arguments note. The confusion in this case has arisen because of two letters given by the Para-Medical Board on 13.8.2019 and 4.9.2019. In the letter dtd.13.8.2019, the Para-Medical Board has stated that the Pre-University Board has rejected the representation to consider the Para-Medical Diploma course as equivalent to PUC and therefore, the said Diploma course done by the applicant in this case is not equivalent to PUC. However, in their letter dtd.4.9.2019, the same Para-Medical Board has informed that the Diploma Course done by the applicant may be considered as equivalent to Second PUC based on the orders of the Govt. of Karnataka vide DPAR 81 SCR 2017 dtd.27.2.2018 wherein the equivalence of various courses of Diploma etc. to PUC has been mentioned vide Annexure-A12. Vide Annexure-R/4, the issue was again raised by the respondents with the 2nd respondent as to the treatment relating to the two divergent letters. The

respondents had also addressed the Pre-University Board of the Govt. of Karnataka separately and vide Annexure-R6 this Board, referring to the Govt. of Karnataka circular dtd.27.2.2018, has mentioned that the said circular does not contain any reference to the Para-Medical course. The Govt. of Karnataka letter dtd.27.2.2018 has mentioned very clearly that a person who is doing three year Diploma will be considered as equivalent to PUC. This is a general order which obviously would include the Para-Medical course also done by the applicant. Subsequent to this letter from the Pre-University Board, vide Annexure-R9, Para-Medical Board has once again informed that initially the Pre-University Board had rejected their representation but at a later date as per the Govt. Order No.C-Asu.E 81 Service 2017, the Director Pre-University Board has orally given directions that Diploma qualification can be considered as equivalent to PUC and as such their office had issued another letter No.PMB/2711/2019-20. Even though they have not mentioned the date, it is apparent that this refers to the letter dtd.4.9.2019(Annexure-R8). The sum and substance of the above would clearly show that the Govt. of Karnataka had decided that the three year Diploma course run by the relevant Board will be equivalent to PUC or 10+2 which is the minimum educational qualification prescribed for the post applied for by the applicant and in which he came out successful. Therefore, we have no hesitation in holding that the cancellation of the candidature of the applicant vide Annexure-A17 requires to be quashed since the applicant possesses the necessary qualification despite a bit of confusion in the communication received from the Para-Medical Board. Therefore, Annexure-A17 is quashed and the respondents are directed to go ahead with the appointment to the applicant vide Annexure-A8 which was kept pending for want of clarification regarding the educational

qualification from the State Government. This they should do so within a period of one(1) month from the date of issue of this order.

8. The OA is allowed with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01220/2019

Annexure-A1: Recruitment notification to the post of OT Assistant

Annexure-A2: Online application

Annexure-A3: Diploma certificate in OT Technology

Annexure-A4 & 5: Eligibility certificate issued by RGUHS permitting for lateral entry to 2nd year B.Sc.(OT Technology) & provisional B.Sc. certificate

Annexure-A6: Notification of shortlisted candidates for document verification

Annexure-A7: Letter dtd.5.7.2019

Annexure-A8: Select list dtd.22.8.2019

Annexure-A9: 1st respondent's letter to the State Govt.

Annexure-A10 & 11: Clarification by R2 in Kannada & its English translation

Annexure-A12 & 13: DPAR circular in Kannada dtd.27.2.2018 & its English Translation
Annexure-A14: Marks sheet of the applicant
Annexure-A15: Admission notification for para medical course
Annexure-A16: Representation dtd.19.9.2019

Annexures with MA.878/2019 filed by the applicant:

Annexure-A17: ESIC notice dtd.25.11.2019

Annexures with reply statement:

Annexure-R1: Letter dtd.5.8.2019
Annexure-R2: Letter dtd.11.10.2019
Annexure-R3: Letter dtd.13.8.2019
Annexure-R4: Letter dtd.9.9.2019
Annexure-R5: Reminder dtd.20.9.2019
Annexure-R6: Letter dtd.5.11.2019
Annexure-R7: Experience certificate dtd.28.11.2017
Annexure-R8: Letter dtd.4.9.2019
Annexure-R9: Letter dtd.31.10.2019

Annexures with reply to MA.878/2019

-NIL-

Annexures with reply filed by R2:

-NIL-
