

209/90, 211/90, 209/91
(1) 2697/90
(2) 2675/90

Date of decision: 08.02.1991.

(1)

OA 138/91

Dr. (Mrs.) Vijaya Dhar

...Applicant

Vs.

Employees State Insurance Corporation through Director General & Another

...Respondents

(2)

OA 2637/90

Dr. Gyan Prakash Pathak

...Applicant

Vs.

Employees State Insurance Corporation through Director General & Another

...Respondents

(3)

OA 2675/90

Dr. (Mrs.) Anjoo Anzai

...Applicant

Vs.

Employees State Insurance Corporation through Director General & Another

...Respondents

For the applicants in (1) to ...Shri N. Safaya,
(3) above Counsel

For the respondents in (1) to ...Shri D.P. Malhotra,
(3) above Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? yes
2. To be referred to the Reporters or not? yes

JUDGMENT:

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

These applications have been filed by part time

Specialist Doctors engaged by the Employees State

Insurance Corporation (hereinafter referred to as 'ESIC')

wherein they are praying for their regularisation in the

posts held by them. As common questions of law have been

raised in these applications, it is proposed to deal with

them in a common judgment at the admission stage itself.

2. In OA 138/91 an interim order was passed on 1.2.1991 to the effect that status quo as of that date

remained as was as regards the continuance of the applicant in the present

post no new post be maintained. Similar interim orders were also passed on 19.12.1990 in OA No. 2637/90 and 2675/90. These

interim orders have been continued till the applications

were heard finally on 4.2.1991 and judgment reserved

thereon.

3. The applicant in OA 138/91 is a Dental Specialist

while the applicant in OA 2637/90 is a Specialist in

Orthopaedics and the applicant in OA 2675/90 is a

Specialist in Gynaecology.

4. The applicants were engaged as part-time

Specialists under the ESIC scheme in ESI Hospital,

Noida on the terms and conditions stipulated in the

Memorandum containing the offer of appointment. These

terms and conditions include the stipulation that the

doctor concerned will receive a consolidated remuneration

of Rs.2,500/- per month with no other allowances or

facilities, that he/she will be required to perform

5 continuous hours of duty three days in a week in ESI

(43) 8

Hospital, Noida as may be assigned to him/her from time to time and that the part-time engagement will be temporary and terminable by giving one months notice on either side.

5. The applicant in OA 138/91 has been given a notice of termination on 4.1.1991 to the effect that her services will stand terminated with effect from 4.2.1991. The applicants in OA 2637/90 and OA 2675/90 were given similar notices of termination on 16/17.11.1990 intimating them that their services will stand terminated with effect from 18.12.1990.

6. The contention of the applicants is that they are qualified doctors and that the practice of appointment of part-time Specialists adopted by the respondents is not legally sustainable. The applicant in OA 138/91 was appointed with effect from 28.11.1989 while the applicant in OA 2637/90 was appointed in October, 1989 and the applicant in OA 2675/90 in August, 1989 as part-time Specialists and they have continued in that capacity upto date.

7. The respondents have contended in their counter-affidavit that the engagement of the applicants was purely stop gap arrangement because duly qualified candidates selected in accordance with the recruitment regulations for the posts were not available at the time of commissioning of the Hospital at Noida. They have also contended that the applicants did not acquire any

- 3 -

existing strength of Doctors/Specialists in the ESIC

Hospitals at Delhi and Noida is sufficient or not is a matter for the respondents to consider. The only direction that can be issued to them is that in case any regular vacancy arises in the future, the suitability of the applicants for appointment should also be considered by the respondents. In case posts have already been advertised and the selection process has not been completed, the respondents should also consider the suitability of the applicants along with the others who have applied for the post concerned, even if the applicants have not formally applied against the advertisement. This is, however, subject to the condition that the applicants are otherwise eligible for appointment on regular basis and that the respondents should relax the age limit to the extent of the service rendered by the applicants.

12. In the light of the foregoing, the applications are disposed of with the following orders and directions:-

(i) The respondents are directed to continue the applicants in their present post of Specialists till they are replaced by regular candidates recommended by the UPSC.

(ii) In case regular vacancies arise in the future, the

Hospital, Noida as may be assigned to him/her from time to time and that the part-time engagement will be temporary and terminable by giving one month's notice on either side.

5. The applicant in OA 138/91 has been given a notice of termination on 4.1.1991 to the effect that her services will stand terminated with effect from 4.2.1991. The applicants in OA 2637/90 and OA 2675/90 were given similar notices of termination on 16/17.11.1990 intimating them that their services will stand terminated with effect from 18.12.1990.

6. The contention of the applicants is that they are qualified doctors and that the practice of appointment of part-time Specialists adopted by the respondents is not legally sustainable. The applicant in OA 138/91 was appointed with effect from 28.11.1989 while the applicant in OA 2637/90 was appointed in October, 1989 and the applicant in OA 2675/90 in August, 1989 as part-time Specialists and they have continued in that capacity upto date.

7. The respondents have contended in their counter-affidavit that the engagement of the applicants was purely stop gap arrangement because duly qualified candidates selected in accordance with the recruitment regulations for the posts were not available at the time of commissioning of the Hospital at Noida. They have also contended that the applicants did not acquire any

right to the post and cannot challenge the impugned orders of termination which have been made strictly in accordance with the terms of their engagement. The applicants have to make way for regular candidates who have been selected by the UPSC. They have further contended that the work-load in the Hospital, according to the assessment recently made by the respondents, can be handled easily by the full time Specialist who has been selected on a regular basis and, therefore, the continuation of the applicants as part-time Specialists is no longer necessary or justified.

8. We have carefully gone through the records of the case and have considered the rival contentions.

The learned counsel of the respondents stated that the recruitment of doctors in the ESIC ^{which} used to be through the UPSC, is being discontinued and that the ESIC itself is engaged and will undertake this task in view of the ~~existing~~ provisions of the Employees State Insurance Act, 1948, as amended in 1989. He has produced before us a statement showing the sanctioned strength and the Medical Officers in position in the 3 ESIC Hospitals at Basaidarapur, Ghilmil and Noida functioning under the direct administrative control of ESIC in Delhi and Noida in the three specialities of Orthopaedics, Obst. & Gynae and Dentistry. According to the statement, there are 4 sanctioned posts in the Orthopaedic speciality out of which 3 have been filled up on regular basis. One regular post has been

5.

There is no vacant under the provisions of this writ petition in another case. There are six sanctioned posts in Obst. & Gynae speciality, out of which 5 have been filled up on regular basis. An offer of appointment has been already given to a regular candidate recommended by the UPSC. There are 4 sanctioned posts in the Dental speciality, out of which 3 posts have been advertised for direct recruitment in December, 1990 and one has been filled up on regular basis and one on part-time basis. According to them, there is no vacancy to accommodate the applicants in the ESIC Hospitals in Delhi and Noida.

9. The learned counsel of the respondents also stated that it will be open to the applicants to apply in response to the advertisements issued by the ESIC and in case they are eligible in all respects, their suitability will also be considered by the Selection Board.

10. The learned counsel of the applicant stated that the need for the doctors in the 3 specialities mentioned by the respondents has not been ~~stated correctly~~ and that there is ~~another~~ ^{more} need for appointment of Specialists on regular basis.

11. In our view, the question as to whether the

existing strength of Doctor/Specialists in the ESIC Hospitals at Delhi and Noida is sufficient or not is a matter for the respondents to consider. The only direction that can be issued to them is that in case any regular vacancy arises in the future, the suitability of the applicants for appointment should also be considered by the respondents. In case posts have already been advertised and the selection process has not been completed, the respondents should also consider the suitability of the applicants along with the others who have applied for the post concerned, even if the applicants have not formally applied against the advertisement. This is, however, subject to the condition that the applicants are otherwise eligible for appointment on regular basis and that the respondents should relax the age limit to the extent of the service rendered by the applicants.

12. In the light of the foregoing, the applications are disposed of with the following orders and directions:-

(i) The respondents are directed to continue the applicants in their present post of Specialist till they are replaced by — regular candidates recommended by the UPSC.

(ii) In case regular vacancies arise in the future, the

respondents shall consider the suitability of the applicants for appointment in case they are otherwise eligible. As regards the age limit prescribed for the post, the respondents shall relax the age limit to the extent of the service rendered by the applicants in the ESIC as part-time Specialists.

(iii) In case the selection process for appointment to any vacant post has not been completed, the respondents shall consider the suitability of the applicants also along with other candidates who have applied for the post, if the applicants are otherwise eligible for appointment. As regards age limit prescribed for the post, the respondents shall relax the same to the extent of service rendered by the applicants as part-time Specialists in the ESIC.

(iv) For the purpose of consideration of the suitability of the applicants as in (ii) and (iii) above, the respondents shall not insist that the applicants should formally apply for the post advertised.

There will be no order as to costs.

Let a copy of this order be placed in

OA No.138/91, OA 2637/90 and OA 2675/90.

(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

(P.K. KARTHA)
VICE CHAIRMAN(J)