

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3911/2014
MA 1422/2016

Reserved on: 26.05.2016
Pronounced on: 1.06.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Dr. Rupali Khanna, aged about 28 years
W/o Dr. Madhur Mahna
Presently working as Senior Resident,
Employees State Insurance Model Hospital,
Basaidarapur, Ring Road, New Delhi-110015
R/o D-71, Mansarovar Garden,
New Delhi-110015

... Applicant

(Through Shri S.K. Das, Advocate)

Versus

1. Director General
Employees State Insurance Corporation
Panchdeep Bhavan, CIG Road,
New Delhi-110002
2. Director (ME)
Employees State Insurance Corporation
Panchdeep Bhavan, CIG Road,
New Delhi-110002
3. Medical Superintendent
Employees State Insurance Model Hospital
Basaidarapur, Ring Road,
New Delhi-110015

... Respondents

(Through Mrs. Rekha Palli, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

M.A. 1422/2016 was taken up for disposal first.

2. Learned counsel for the respondents Mrs. Rekha Palli fairly stated that the respondents would return the original educational certificates to the applicant and the applicant may in this regard contact the respondents office any day after 6th of June, 2016. M.A.1422/2016 thus stands disposed of with direction to the applicant to appear in respondents office on any day after 6th of June, when the original educational certificates would be returned to her.

3. As regards OA, the applicant's case is that after completing her P.G. Course in Obstetrics and Gynecology in ESI-PGIMSR, Basai Darapur, New Delhi in June 2014, she appeared for walk-in interview as Senior Resident Doctor and joined the post on 4.07.2014. The applicant had filled up a bond at the time of admission to P.G. Course that she would serve any of the Institutions of the Corporation or of ESI Scheme of the State Government as the case may be for a period of five years anywhere in India and in case she fails to serve the Corporation for the period of five years, the Bounden and Sureties shall forthwith pay to the Corporation on demand the total amount of Rs.7,50,000/- (Rupees seven lakh fifty thousand only) with interest @ 15% towards failure to fulfill the obligation. From the appointment letter of the applicant, it is clear that this was an *ad hoc* appointment. It is clear from condition no.8 of the appointment letter that it was tenure post and initial appointment was for one year which was extendable for another period of one year subject to maximum of three years on the basis of satisfactory work and conduct during the previous

tenure. The applicant states that while she was working against this *ad hoc* post, two months thereafter, on 4.9.2014, the respondents issued another offer of appointment to her as Senior Resident under ESIC Residency Scheme in fulfillment of condition of compulsory service for a period of five years. The applicant did not join at the new place of posting i.e. ESIC Hospital, Ludhiana. In fact, on 8.09.2014, she sent a representation expressing her inability to accept the offer of posting at Ludhiana due to advanced stage of pregnancy and, in fact, proceeded on maternity leave on 8.10.2014 (AN). The respondents thereafter issued OM dated 8.10.2014 relieving her from her present duties with instructions to report for duty to the MS, ESI Hospital, Ludhiana, Punjab. It is stated that the applicant was neither granted maternity leave nor paid salary for that period.

4. The learned counsel for the applicant further states that even now the applicant is not in a position to join at Ludhiana because she has a small child and her husband, who is also a doctor, is posted in a Delhi Hospital. Being aggrieved by the action of the respondents, the applicant has filed this OA with the following prayers:

- "A. pass an appropriate order declaring the impugned order dt. 08.10.2014 illegal and non est in law; and
- B. pass a further order declaring the bond executed by the Applicant at the time of her admission to PG Course in Respondent Hospital to the effect of forfeiture of Rs.7.5 lakhs in case of not serving the Respondent Organization for a period of 5 years

subsequent to the completion of PG Course, as non-est having no legal sanctity;

- C. pass an order directing the respondents to return the original certificates to the applicant; and
- D. award cost of the present litigation.”

5. Learned counsel for the respondents stated that the applicant had filled up the bond for five years service with the respondents and, therefore, she was bound by it. It is because of this bond that the respondents had issued appointment letter appointing her as Senior Resident in ESIC Ludhiana but without informing the superiors, she went in for walk-in interview and started functioning there. It is clarified that as per the agreement, she was required to serve anywhere in India and, therefore, her whole conduct vis-à-vis the respondents has been highly irresponsible. As such, no relief should be granted by the Tribunal in this case.

6. We have heard the learned counsel for the parties and gone through the pleadings available on record.

7. It is clear that when the applicant joined the P.G. Course, she had signed the bond that either she will serve ESI for a period of five years or in case of failure, would pay back respondents Rs.7.5 lakhs. She cannot renege from this now. In order to fulfill the five year clause, the respondents posted her vide order dated 4.09.2014, just two months after she had joined on *ad hoc* basis on 4.07.2014. The applicant refused to

join at Ludhiana. She worked just for one month and thereafter proceeded on maternity leave.

8. The learned counsel for the applicant tried to argue that since the applicant had already joined on *ad hoc* basis on 4.07.2014, there was no need for the respondents to post her at Ludhiana and she should have been allowed to continue against this *ad hoc* post.

9. First of all, it is not for the applicant to choose where she will get posted. Secondly, this *ad hoc* posting was only for a year, extendable for maximum of three years on the basis of satisfactory work and conduct during the previous tenure. The respondents posted her to Ludhiana to complete her five year bond. The applicant while filling up the bond was agreeable to serve anywhere in India. While she happily continued on *ad hoc* basis for two months from 4.07.2014 to 5.09.2014, she is suddenly in no position to work claiming pregnancy and proceeds on maternity leave without any sanction. It is more than obvious that the whole intention of the applicant was to avoid going to Ludhiana and stay at Delhi where her husband is posted. The conduct of the applicant has not been above board and is deprecated. She has only tried to use the forum of the Tribunal to cover up her defiance of valid orders of the respondents and delay and avoid joining at Ludhiana and payment of Rs.7.5 lakhs. It is only when the respondents refused to give back her original certificates that she came rushing to this Tribunal through an M.A.

10. We see no reason to interfere with the impugned order dated 8.10.2014 passed by the respondents and the prayer of the applicant to declare it illegal and *non est* in law is rejected. As regards prayer (B), which is regarding forfeiture of Rs.7.5 lakhs, the respondents shall take action as per the agreement and in accordance with law. Thus, prayer (B) also stands rejected. O.A. is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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