

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00144/2018

DATED THIS THE 30th DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Dr.Veda.P
W/o Sridhar V
Aged about 48 years
Working as Specialist-cum-Assistant Professor
ESIC Model Hospital, Medical College
and Post Graduate Institute of Medical
Sciences and Research
II Block, Rajajinagar
Bengaluru-560010.

....Applicant

(By Advocate M/s. Subba Rao & Company)

Vs.

1. The Union of India
rep by its Secretary
Department of Labour & Employment
No.2, Rafi Marg
New Delhi – 110001.
2. Employees' State Insurance Corporation
Panchadeep Bhavan
Comrade Inderjeet Gupta (CIG) Marg
New Delhi – 110 002.
Rep by its Director General
3. The Medical Commissioner
Employees' State Insurance Corporation
Panchadeep Bhawan
Comrade Inderjeet Gupta (CIG) Marg
New Delhi – 110 002.
4. The Deputy Medical Commissioner for
Medical Education
Employees' State Insurance Corporation
Panchadeep Bhawan
Comrade Inderjeet Gupta (CIG) Marg
New Delhi – 110 002.

5. The Joint Director
Employees' State Insurance Corporation
Panchadeep Bhawan
Comrade Inderjeet Gupta (CIG) Marg
New Delhi – 110 002.

...Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.PC for CG)

O R D E R

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

The case of the applicant is that she is holder of MBBS, MD in Pathology and was appointed as Insurance Medical Officer in ESIS(M) Services, Dept. of Labour, State of Karnataka and posted to the Dept. of Pathology, ESIC Hospital, Indiranagar, Bengaluru on 27.11.1997. She was transferred to ESI Hospital, Rajajinagar, Bengaluru in January 1998 and posted to the Dept. of Pathology. Subsequently she was deputed to ESIC Model Hospital, Rajajinagar. While working as such her services came to be absorbed in ESIC Model Hospital, Rajajinagar w.e.f. 1.1.2006 with retrospective effect, on the basis of option exercised by her. On being applied for the post of Specialist Grade-II(Junior Scale) in ESIC, she was selected and appointed as Specialist Grade-II on 14.7.2007 in ESIC. Thereafter, she was appointed as Assistant Professor in ESI, PGIMSR, Rajajinagar by a memorandum dtd.23.9.2009(Annexure-A1) and she has been working as Specialist cum Assistant Professor in the present place. When the Post Graduation Course was started during the year 2009 for which approval has been granted by the Medical Council of India (MCI), the applicant was appointed as Assistant Professor in Medical College to teach Post Graduation course in Pathology.

2. The applicant submits that during the year 2011, a notification came to be issued by the respondents calling for applications from eligible candidates for selection and

appointment to the post of Associate Professor. Being fully eligible, the applicant made a request to the respondents to issue Service Certificate to apply for the said post and the ESIC, Model Hospital has issued Service Certificate on 16.5.2011(Annexure-A2). Since the date mentioned in that was not proper, she sought request from the ESIS Govt. of Karnataka to issue a service certificate. Pursuant to the request, the Director ESIS Medical Services, Govt. of Karnataka issued a service certificate dtd.7.7.2011(Annexure-A3). Thereafter a notification came to be issued to open Under Graduate Course in Medical College. At that time the applicant was eligible to apply for the same. Accordingly, service certificate came to be issued to her by the ESIC Model Hospital.

3. The applicant further submits that while she was working as Assistant Professor, a Circular dtd.15.10.2012(Annexure-A4) came to be issued by the Dean of ESIC, PGIMSR, Bengaluru enclosing a copy of 2012 MCI notification calling for applications from the eligible candidates to furnish the details of experience and Research Paper to forward the same to Headquarters for the purpose of designating as Associate Professors as per eligibility criteria. In the said notification, amendment was made to the regulations called Minimum Qualification for Teachers in Medical Institutions(Amendment) Rules, 2012 as per which the requisite experience for equating Consultant or Specialist (after possessing Post Graduation Medical Degree in the subject) working in the concerned Speciality in a minimum 300 bedded ESIC Hospital as Professor shall be more than 18 years with 4 Research publications in Index Journal as first author or corresponding author. Such consultant or specialist, after joining Medical College shall be called as 'Designated Professor' and on completion of 3 years in the capacity of Designated Professor such person shall be designated as 'Professor'. The applicant has fulfilled

all the prescribed eligibility criteria and she had published 7 publications as first author which details have been given in the OA in chronological order. Since the applicant is eligible and entitled to be designated as Associate Professor, she submitted her application dtd.8.4.2012(Annexure-A5) which was forwarded to the 5th respondent by the Dean, ESIC Medical College, PGIMSR by letter dtd.15.4.2013(Annexure-A6). Even prior to that the applicant submitted a representation on 12.12.2012(Annexure-A7) to designate her as Associate Professor. But the same was not considered by the respondents.

4. The applicant further submits that the Rules 2012 was further amended as per MCI Notification dtd.22.1.2018 vide Amendment Notification of 2018 published in Karnataka Gazette dtd.23.1.2018(Annexure-A8) as per which, the requisite experience for equating Consultants/Specialists(after possessing Post Graduation Degree in subject) working in concerned Speciality in 300 bedded Non Teaching District Hospital owned and managed by State Government/Central Government as Professor shall be more than 18 years' experience with 4 Research Publications in Index Journal as First Author or corresponding author. Such Consultant or Specialist after joining Medical College shall be called 'Designate Professor' and on completion of 3 years in the capacity of Designate Professor, such person shall be designated as 'Professor'. For designating a Consultant or Specialist as Associate Professor, the requisite experience is that they are working in concerned speciality in 300 bedded Non Teaching District Hospital owned and managed by State Government/Central Government as Associate Professor shall be more than 10 years' experience with 2 Research publications in Index Journal as First Author or corresponding authority. Such Consultant or Specialist after joining Medical College shall be called 'Associate Professor'. The Amendment Rules 2018 provide for

designating Consultant or Specialist as Associate Professor, Designate Professor, Professor if he had worked in Non-Teaching District Hospital owned and managed by State Government or Central Government. Therefore, by reading of 2018 Rules, a Consultant/Specialist who had worked for more than 10 years in Non-Teaching District Hospital are eligible for designating as 'Associate Professor'. Likewise, in the case of Designate Professor and Professor, experience for designating Consultant or Specialist as Designate Professor is 18 years experience and to be designated as Professor is 18+3 years' experience. The applicant has completed 10 years of service in Nov., 2007 and she ought to have been considered for designating her as Associate Professor in Nov., 2007. That has not been done. The applicant has completed 18 years of service in Nov., 2015 and she has fulfilled all the criterion as laid down in 2012 and 2018 Rules and is fully qualified and entitled to be designated as Designate Professor and Professor. The applicant has published 7 Research Publications in Index Journals as First Author. In view of the Rules, the designation of the applicant should be treated as Designate Professor from the day on which she completed 18 years of service i.e. in the month of Nov.2015 and after completion of 3 years of service in the capacity of Designate Professor she is eligible and entitled to be called as Professor. But her case was not considered for designating her as Associate Professor and Designate Professor and Professor. The entire action of the respondents is highly illegal, unjust, arbitrary and in utter contravention of Articles 14, 16 and 21 of the Constitution of India. Hence, being aggrieved by non consideration of her case for designating her as Associate Professor and Designate Professor and Professor, the applicant has filed the present OA seeking the following relief:

“Issue Writ of Mandamus or any appropriate order of direction, directing respondents to designate applicant as Designate Professor with effect from Nov 2015 in terms of the Minimum qualification for teachers in Medical

Institutions Rules, 1998 and subsequent amendment thereto and further Designate her as a Professor from the date on which she is actually eligible and grant all the consequential benefits to which she is legally and entitled to as if she has been designated as Designated Professor, in the interest of justice and equity”.

5. On the contrary, the respondents in their reply statement have submitted that in the ESI Corporation, there are three distinct cadres viz., GDMOs, Specialists(Non-teaching) and Specialists (Teaching). For setting up of the Medical College, in the initial stage, various GDMOs and Specialists have been re-designated as 'Assistant Professor' for the purpose of Medical Council of India(MCI) Assessment in addition to their regular duties of their parent cadre. The applicant comes under Specialist cadre(Non-teaching) and has been assigned additional teaching duties subject to conditions stipulated vide memo dtd.23.9.2009(Annexure-A1) by designating her as 'Specialist-cum-Assistant Professor' for the purpose of fulfilling the conditions of MCI. In the said memo, it has been stated that 'the designation as 'Specialist-cum-Assistant Professor' is applicable only at present place of posting and such designation will stand withdrawn on transfer to other ESI Hospital'. Hence, it is apparent that the re-designation is only for the purpose to accord MCI approval to start the proposed ESIC Medical College at Rajajinagar since the Regular Teaching Faculty were not appointed in the respondent ESIC college at that time and it will automatically stand withdrawn if she got transferred to other ESIC Hospital. Her re-designation was only for a limited purpose i.e. for obtaining approval from the MCI to start a Medical College. The contention of the applicant that she was appointed as Assistant Professor is not correct. It was a mere re-designation of her original post of Specialist Gr.II(Jr.Scale) and is subject to approval of MCI & Affiliating University and no additional remuneration would be paid on account of such designation as per memo dtd.23.9.2009. She has to perform existing duties of Specialists assigned to her and in addition she has also to perform the duties of

Teaching Faculty as Assistant Professor with no additional remuneration. In the service certificate at Annexure-A2 which is issued upon applicant's request to apply for the post of Teaching Faculty in ESIC PGIMSR, Rajajinagar, it is clearly stated that 'in the event of her selection/acceptance of the post offered she will have to tender resignation from her present post i.e Specialist Gr-II(Sr.Scale). The said certificate is issued only for applying the regular post of Teaching Faculty and not for re-designation of her parent cadre which she was holding. It is apparent that she was aware that her re-designation was not a permanent one and it was only for the limited purpose of MCI approval/assessment. Hence, her claim that she was appointed as Associate Professor is false. It is the 2nd respondent who is the competent authority to designate the applicant as Associate Professor on ratification by MCI and concerned University. Further it is submitted that as per MCI website the profile of the faculty is shown as Assistant Professor and not as Associate Professor. Further designate Assistant Professor is an equation to Teaching Faculty and do not result in taking over of Teaching Faculty post as designate faculty continues to hold the post in the Parent Cadre. Hence, the applicant has no locus standi to claim to designate her as Designate Professor.

6. The respondents submit that the applicant submitted a representation dtd.19.10.2010(Annexure-R1) to the Medical Superintendent stating that due to personal reasons, she does not wish to opt for teaching cadre and would like to withdraw from the designated post of Specialist-cum-Assistant Professor and wish to continue in non-teaching cadre as Specialist in Pathology and thereby withdrawn her option from teaching cadre and the designated post of Specialist-cum-Assistant Professor. Based on her request, the Joint Director (Admn) has forwarded her request vide letter dtd.30.11.2010(Annexure-R2) to the ESIC Hqrs' office which vide

its letter dtd.18.1.2011(Annexure-R3) has withdrawn the re-designation of the applicant i.e. Specialist-cum-Assistant Professor(Pathology) with immediate effect. But the applicant has suppressed these facts and made false and baseless allegations against the respondents. On this ground alone the OA deserves to be dismissed. The applicant submitted another request letter dtd.2.2.2011(Annexure-R4) which is forwarded to the competent authority on 10.2.2011(Annexure-R5) requesting to re-designate her as Assistant Professor but the same is not considered by the competent authority till date. As such the applicant does not have any right to claim to designate her Designate Professor from November 2015. They submit that as per the latest instructions issued by the Competent Authority, ESIC Hqrs's Office dtd.21.1.2019(Annexure-R6) regarding revised sanction and release of Teaching Faculty upon rationalisation of posts in the Dept. of Pathology, all the vacancies have already been filled up and at present there is no scope for re-designated teaching faculty in the Dept. of Pathology. Hence, the OA lacks merit and is liable to be dismissed.

7. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that ESIC, Model Hospital, Rajajinagar issued a Circular dtd.21.8.2009(Annexure-A9) inviting willingness from such of those Specialists working on regular basis to be designated as faculty for the proposed ESIC, PGIMSR, Rajajinagar, Bengaluru. In response to the said circular, the applicant expressed her willingness to be designated as teaching faculty by her letter dtd.22.8.2009(Annexure-A10). As such ESIC by memorandum dtd.23.9.2009(Annexure-A11) designated the applicant among others as Specialist-cum-Assistant Professor(Teaching Faculty). From 23.9.2009 till date, the applicant continues to hold the said post without any break at any point of time in the ESIC,

PGIMSR, Rajajinagar. Hence, the respondents shall not be permitted to contend that she was designated only for the purpose of getting approval from the MCI. Such contention is also not tenable for the reason that if that be so, after obtaining permission/approval from the MCI to start the post graduation course in ESIC, PGIMSR, the respondents ought to have restored the original position of the applicant by withdrawing the order dtd.23.9.2009. Annexures-R1-R3 submitted in the reply statement are of no help to the respondents in support of their contention since her request for withdrawal of willingness though accepted by the ESIC, was not at all acted upon. On the other hand, from the date on which she was designated as Specialist-cum-Assistant Professor till now, she continues to perform her duties as such at ESIC, PGIMSR, Rajajinagar. She produced the particulars of the teaching faculty furnished by the 3rd respondent at Annexure-A14. The letter dtd.2.2.2011 vide which she requested the ESIC to permit her to continue in teaching faculty was not acted upon till now and there was no response to the same which declares that the said request has been granted as silent amounts to admission. It is the respondents who suppressed the real and material facts by not acting upon the letter dtd.2.2.2011 and not by her.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The minimum qualification for teachers in Medical Institutions has been prescribed vide the Notification dtd.6.8.2012 titled as 'Minimum Qualification for Teachers in Medical Institutions (Amendment) Regulations, 2012' making certain amendments to the original Regulations of 1998. The relevant qualifications for Professor, Associate Professor and Assistant Professor as per the Regulations of 2012 are as follows:

“The requisite experience for equating a Consultant or Specialist (after possessing postgraduate medical degree in the subject) working in the concerned specialty in a minimum 300 bedded ESI Hospitals as professor shall be more than 18 years with Four Research publication in indexed journal as 1st Author or corresponding author. Such Consultant or Specialist after joining a medical college shall be called as “Designate Professor” and on completion of three years experience in the capacity of Designate Professor, such person shall be designated as “Professor”.

The requisite experience for equating a Consultant or Specialist (after possessing postgraduate medical degree in the subject) working in the concerned specialty in a minimum 300 bedded ESI Hospitals as Associate Professor shall be more than 10 years with Two Research publication in indexed journal as 1st Author or corresponding author. Such Consultant or Specialist after joining a medical college shall be designated as “Associate Professor”.

The requisite experience for equating a consultant or specialist (after possessing Postgraduate medical degree in the subject) working in the concerned specialty, in a minimum 300 bedded ESI Hospitals as Assistant Professor shall be 6 years. Such consultant or specialist after joining medical College shall be designated as Assistant Professor.”

9. The regulations were further amended in the year 2018 vide the Notification dtd.22.01.2018 wherein for ESI Hospitals, Non-Teaching District Hospitals owned and managed by State Govt./Central Govt. were added in terms of the qualifications equivalent for Professors and Associate Professors and there is no amendment in relation to the designation as Assistant Professor. The applicant would claim that she has already been designated as teaching faculty vide Annexure-A1 where she was designated as Specialist-cum-Assistant Professor for fulfilling the conditions of MCI. She would contend that she has been continuing in the designation since then. The respondents would state that Annexure-A4 memorandum was issued only for the purpose of satisfying the norms of the Medical Council of India for the starting of Medical College and in fact the applicant had withdrawn her option from the teaching cadre vide Annexure-R1 which was also accepted by the respondent organisation vide Annexure-R3 and that her reconsideration application vide Annexure-R4 is still not approved by the respondents. The Annexure-R4 letter for

reconsideration submitted by the applicant is dtd.02.02.2011. The respondents also submit that the applicant was never appointed as an Assistant Professor and it was only a designation to satisfy the norms of MCI. As rightly contended by the applicant, even though the respondents had accepted her withdrawal from teaching faculty vide Annexure-R3, she is still working under the same designation which was approved in 2009. The respondents have also not specifically challenged as to why the applicant is not qualifying to be designated as Assistant Professor, Associate Professor and Designated Professor as per the qualifications she has. She has in fact joined as Specialist Grade-II since 14.07.2007 and has obviously completed more than 10 years in the same grade. Therefore, we do not see any infirmity in her being considered as per the amended rules of 2012 and 2018. The respondents cannot take a plea that the designation given to her vide Annexure-A1 was only for the limited purpose of satisfying the MCI norms when in fact they have mentioned in the said memorandum that the applicant shall continue to perform the existing duty of specialist assigned to her and in addition, she will perform the duties of teaching faculty as Assistant Professor. Apparently they had not acted upon their own order of accepting the withdrawal of her option from teaching faculty and she is continuing as such with the same designation. The respondents have not refuted her claim that she is still functioning in the designation given to her vide Annexure-A1. The respondents have also not refuted the claim of the applicant with regard to the 7 publications as first author in Index Journals as per rules. Apparently the applicant is fully qualified and has the requisite experience as per the rules for consideration as Associate Professor and further designations thereafter. Therefore the respondents are directed to consider the case of the applicant as per the rules within a period of two(2) months from the date of this order, without letting the issue about the number of posts sanctioned standing in the way. It is necessary for the

respondents to create such posts based on the need of the organisation and the availability of the persons who can be promoted.

10. The OA is therefore allowed to the above extent. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00144/2018

Annexure A1: True copy of Memorandum dtd.23.9.2009
Annexure A2: True copy of Service Certificate dtd.16.5.2011
Annexure A3: True copy of Service Certificate dtd.7.7.2011
Annexure A4: True copies of Circular dtd.15.10.2012 and MCI Notification
Annexure A5: True copy of application submitted by the applicant dtd.8.4.2013
Annexure A6: True copy of Letter dtd.15.4.2013
Annexure A7: True copy of representation dtd.12.12.2012
Annexure A8: True copy of Amendment Notification of 2018 published in Karnataka Gazette dtd.23.1.2018

Annexures with reply statement:

Annexure-R1: Copy of the letter dtd.19.10.2010
Annexure-R2: Copy of the letter dtd.30.11.2010
Annexure-R3: Copy of the letter dtd.17/18.1.2011
Annexure-R4: Copy of the letter dtd.2.2.2011
Annexure-R5: Copy of the letter dtd.10.2.2011
Annexure-R6: Copy of the letter dtd.21.1.2019

Annexures with rejoinder:

Annexure-A9: True copy of the said Circular dtd.21.8.2009
Annexure-A10: True copy of the letter dtd.22.8.2009
Annexure-A11: True copy of the memorandum dtd.23.9.2009
Annexure-A12: True copy of the letter dtd.31.3.2010
Annexure-A13: True copy of the letter dtd.10.2.2011
Annexure-A14: True copy of the particulars of the teaching faculty (teacher profile) furnished by the 3rd respondent to the ESIC
