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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00694/2016

Thursday, this the 21st day of November, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Dr.Athira.S
Amulya, Janani Nagar, -34
Kadappakkada P.O
Kollam – 691 008 ...Applicant

(By Advocate – Mr.George Varghese Perumpallikuttyil)

versus

1. Union of India, represented by the Secretary,
to Government in the Ministry of Labour and
Employment, Central Secretariat
New Delhi – 110 011
2. Employees State Insurance Corporation
Panchdeep Bhawan
C.I.G Marg, New Delhi – 110 002
Rep. By its Director General
3. Deputy Director (Recruitment)
Employees State Insurance Corporation
Panchdeep Bhawan, C.I.G Marg
New Delhi – 110 002
4. Chief Vigilance Officer, Employees State Insurance Corporation
Panchdeep Bhawan, C.I.G Marg
New Delhi – 110 002
5. Annie Mareena Issac
General Duty Medical Officer, ESIC,
Udyogamandal, Kochi, Kerala – 6853 501

(By Advocates - Mr. T.V.Ajaykumar for R 2-4, Mr.R.Rajasekharan Pillai for R5, Mr.E.N.Hari Menon, ACGSC for R1)

This application having been heard on 18th November 2019, the

Tribunal on 21.11.2019 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/694 of 2016 is filed by Dr.Athira.S against the final result for recruitment to the post of Specialist Grade II (Junior Scale) published on 15.7.2016 (Annexure A-5). The reliefs sought in the Original Application are as follows:

- a) Issue appropriate orders calling for the records leading to Annexure A5 and set aside the same;
- b) Declare that selection process culminated in Annexure A5 is unconstitutional, inoperative and void;
- c) set-aside the selection of 5th respondent to the post of Specialist Grade II (Junior Scale) for Kerala Region in the specialist Grade II (Junior Scale) for Kerala Region in the specialty Obstetrics and Gynecology pursuant to Annex.A1 notification;
- d) Issue such other direction or orders to respondents 2 and 3 to conduct fresh selection to the post of Specialist Grade II (Junior Scale) for Kerala Region in the specialty Obstetrics and Gynecology pursuant to Annex. A1 notification;
- e) Issue such other direction or orders, as are deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

2. Applicant is a registered Medical Practitioner with Masters in Obstetrics and Gynaecology and Diploma in Obstetrics and Gynaecology. Pursuant to Annexure A-1 notification, applications were invited for one vacancy of Specialist Grade II (Junior Scale) each for unreserved, OBC and

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SC category under the Kerala region. As qualification, it was provided that candidates should be a Post Graduates with work experience in a responsible position connected with the specialty, for a period of three years in the case of Post Graduate Degree holder and five years in case of Post Graduate Diploma holder. It was also noted that work experience after obtaining the P.G. Degree/diploma will be reckoned as on 10.11.2015 and experience certificate duly signed by the Head of the Department indicating clearly the period and nature of work should be submitted along with the application form.

3. Applicant applied for the post vide Annexure A-2. After due scrutiny, 3rd respondent published a list of ineligible candidates including the name of 5th respondent on account of 'nil experience' (Annexure A-3 dated 25.5.2016). Applicant was called for interview and she was placed at serial no.18 in the list of candidates called for interview (Annexure A-4). However, as a separate case at serial no.34, 5th respondent was also interviewed. To the utter surprise and shock of the applicant, the 5th respondent who was declared as ineligible, has been declared as provisionally selected against Specialist Grade II (Junior Scale) Obstetrics and Gynaecology for the Kerala region. Applicant alleges that this selection is illegal, unjust and arbitrary. Applicant submitted a detailed representation vide Annexure A-6 dated 18.7.2016, which was not responded to.

4. As grounds, applicant submits that inclusion of an ineligible

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candidate in Annexure A4 select list is illegal, unreasonable and the consequential selection as per Annexure A6 is vitiated. The preliminary condition in the notification, i.e, disallowing any modification of the application after its submission, is vitiated here. Applicant averred that she ought to have been preferred to the 5th respondent who is a Diploma holder in Gynecology and Obstetrics.

5. Respondents have filed their reply statement and it is stated therein that this application is not maintainable on account of non-joinder of the selected candidates except the 5th respondent. The essential qualifications required for appointment as Specialist Gr.II (Junior Scale) are described as follows:

“1) A recognized medical qualification included in the first or second schedule of Part -II of the third schedule to the Indian Medical Council Act.

2) Post Graduate Qualification in the requisite speciality as mentioned in the Table A or equivalent

3) Work experience in responsible position connected with the speciality for a period of :

a) 3 years in the case of Post Graduate Degree

b) 5 years in the case of Post Graduate Diploma Holder

Note-1: Work experience after obtaining PG Degree/Diploma will be reckoned as on 10.11.2015.”

6. It is stated that the applicant did not fulfill the eligibility criteria for the post of Specialist Gr-II (Junior Scale) with regard to the essential

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qualification of work experience as on 10.11.2015. After the acceptance of the candidature of the applicant provisionally, a detailed scrutiny was conducted and the applicant was found unfit. It is also submitted that after participating in the selection process, applicant cannot turnaround and challenge the above select list. Respondents have produced copies of the certificates of Diploma and Degree in Master of Surgery of the applicant vide Annexure R2(a) and Annexure R2(b) to prove that the applicant did not possess the mandatory 3 year work experience as on 10.11.2015 after obtaining the Post Graduate Degree qualification or the 5 year experience as on 10.11.2015 after obtainining the Post Graduate Diploma qualification. It is admitted that the respondents had not undertaken a detailed scrutiny of online applications for eligibility and other aspects before calling candidates for interview. Respondents had given Annexure R2(c) reply to his Annexure A-6 representation on 9.8.2016 also.

7. With regard to respondent no.5, it is submitted that on the basis of representation submitted by her after the submission of online application, it was decided to consider her experience which was not included at the time of submission as the option was not working in the website at that time. Hence, she was called for interview along with two other candidates as special case as they were all represented later. Respondents produced copies of certificates of respondent no.5 to show that she is fully eligible to be appointed and Annexure A-5 select list is in accordance with law. Hence, the respondents prayed for dismissal of the Original Application.

8. Respondent no.5 has also filed reply statement. It is stated therein that while submitting the online application, she could not fill the experience column and the application stood forwarded axiomatically. Hence she represented by letter dated 25.10.2015 that she has six years 11 months and 14 days of experience in the field and requested the indulgence of the recruitment cell (Annexure R5 D) and finally she had been allowed provisionally (Annexure R5F).

9. Applicant filed rejoinders to the reply of official respondents as well as private respondent. It is stated therein that only 5th respondent is the necessary party in this O.A as it is her selection which is under challenge. Applicant is a Post Graduate Diploma holder in Obstetrics as well as Post Graduate Degree holder in (M.S) in Obstetrics and Gynecology and her experience is in the specialisation of obstetrics and gynecology. Hence she is fully eligible to be appointed with regard to her academic qualification as well as experience.

10. It is stated that respondent no.5 had submitted copies of her qualifications on 3.6.2016 only, i.e, after the closing date for online applications. Applicant has also quoted Clause 6 of notification which states that 'application once submitted cannot be modified' and Clause 1 states that 'candidates must apply online through the website and any other mode of application will not be accepted'. Without any hesitation, respondents have considered the request made by 5th respondent for inclusion of her

experience after the submission of online application. It is contended that the 5th respondent's experience as an Assistant Insurance Medical Officer is in no way connected with the specialty of Obstetrics and Gynecology. Hence she does not possess requisite academic qualification and experience for the post as Annexure A1 mandates that experience should be connected with the specialty. It is also states that despite the applicant's 1st position in interview, the 5th respondent who was in 3rd position has been given appointment.

11. Heard learned counsel for the parties and perused the records.

12. The controversy relates to the selection of the 5th Respondent, rejecting the candidature of the applicant. To reiterate, the qualification required for appointment as Specialist Grade II junior scale are as follows:

- 1) A recognized medical qualification included in the first or second schedule of Part-II of the third schedule to the Indian Medical Council Act.
- 2) Post Graduate Qualification in the requisite speciality as mentioned in the Table A or equivalent.
- 3) Work experience in responsible position connected with the speciality for a period of :
 - a) 3 years in the case of Post Graduate Degree
 - b) 5 years in the case of Post Graduate Diploma Holder.

Note-1: Work experience after obtaining PG Degree/Diploma will be reckoned as on 10.11.2015.

13. Respondents have gainfully argued that by virtue of documents at Annexure R2(a) and R2(b), the applicant did not possess the mandatory 5

years work experience after obtaining Post Gradation Diploma qualification as on 10.11.2015. It is also averred that due to the practice adopted, this fact came to be known only after detailed scrutiny of online applications. By contrast, the Respondent-5 does possess all the qualifications and experience with necessary specialization of Obstetrician and Gynaecology, whereby she is fully eligible to be appointed as per the academic qualification and experience. It is admitted that Respondent-5 who was ultimately selected had submitted copies of qualification on 03.06.2016 i.e., after closing date for online application. However, this by itself does not constitute a disqualification as at the time of filing applications, she did possess necessary experience and academic qualification. Her contention that she was unable to upload necessary documents as proof is also a common enough problem with many websites.

14. The only point to be examined here is whether the Respondent-5, the selected candidate is fully qualified in accordance with all eligible norms including academic qualification as well as experience. The answer is in the affirmative. One point raised that she had been working as an Assistant Medical Officer and there is no reference to Speciality in Obstetrician and Gynaecology in her work experience, is rejected, as the institution is an Insurance hospital where these services are indeed available and Respondent-5 had spent necessary number of years there. By contrast, applicant does not appear to have the necessary qualification of work experience when she filed her application. Taking all these factors into

account, we conclude that the OA is devoid of merit and ought to be dismissed. We proceed to do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - A true copy of notification dated 24.9.2015 published by the 3rd respondent

Annexure A2 - A true copy of application

Annexure A3 - A true copy of list of candidates found not eligible for the post of Specialist Grade II (Junior Scale) published on 25.5.2016

Annexure A4 - A true copy of schedule of interview along with list of candidates called for interview schedule of interview along with list of candidates called for interview

Annexure A5 - A true copy of final result for recruitment to the post of Specialist Grade II (Junior Scale) published on 15.7.2016

Annexure A6 - A true copy of representation dated 18.7.2016 submitted by the applicant before the 4th respondent

Annexure R5A - True copy of the order No.E1-5010/06/RDD dated 25.11.2008 of the Regional Deputy Director, Insurance Medical Services, Central Zone, Ernakulam

Annexure R5B - True copy of the order No.E1-8753/2003/DIMS(1) dated 16.5.2009 of the Director of Insurance Medical Services

Annexure R5C - True copy of the application submitted by the 5th respondent

Annexure R5D - True copy of the print out of the e-mail dated 25.10.2015 sent by the 5th respondent to 3rd respondent

Annexure R5E - True copy of the print out of the e-Mail dated

14.6.2016 from the 3rd respondent to the 5th respondent along with the 5th respondent's mail to the 3rd respondent

Annexure R2(a) - True copy of the certificate of Diploma dated 4.4.2013 awarded to the applicant by University of Kerala

Annexure R2(b) - True copy of the certificate dated 6.5.2013 awarded to the applicant by University of Kerala

Annexure R2(c) - True copy of the reply dated 9.8.2016 of the 3rd respondent to the applicant

Annexure R2(d) - True copy of the E-mail dated 3.6.2016 of the 5th respondent

Annexure R2(e) - True copy of the employment certificate dated 26.5.2016 submitted by the 5th respondent

Annexure R2(f) - True copy of the certificate of Post Graduate Diploma dated 5.9.2009 awarded to the 5th respondent by the Mahatma Gandhi University

Annexure A7 - A true copy of course completion certificate dated 22.11.2012

Annexure A8 - A true copy of relevant pages of Employees State Insurance Corporation (Specialists Cadre Posts) Recruitment Regulations 2010, notified in the Gazette of India on 9.10.2010

Annexure A9 - A true copy of communication No.A-12/27/2/2012-RTI dated 14.10.2016 from the 2nd respondent

Annexure A10 - A true copy of appeal dated 25.11.2016 filed against Annex.A9

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