



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 13178/2021

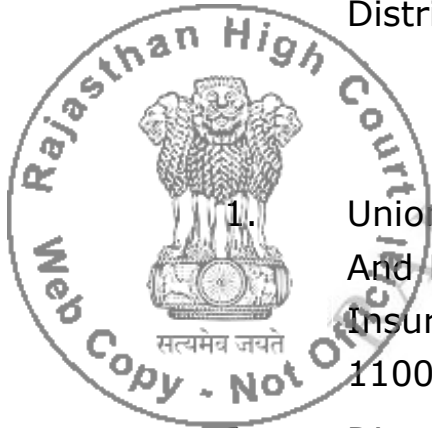
1. Kunal Sharma S/o Shri Man Mohan Sharma, Aged About 19 Years, R/o Vpo- Naghori, Tehsil- Neemrana, District Alwar.
2. Man Mohan Sharma S/o Shri Shrinivas Sharma, Aged About 53 Years, R/o Vpo- Naghori, Tehsil- Neemrana, District Alwar.

----Petitioners

Versus

1. Union Of India, Through Its Secretary, Ministry Of Labour And Employment, Head Quarters Office, Employees State Insurance Corporation, Panchadeep Bhawan, New Delhi-110002.
2. Directorate General Of Health Services, Through Its Director General, Having Office At Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
3. The Medical Counselling Committee, Through Its Secretary For Neet Ug 2021, Directorate General Of Health Services, Government Of India, Nirman Bhawan, Maulana Azad Road, New Delhi-110011.
4. The Director General, Head Quarters Office, Employees State Insurance Corporation, Panchadeep Bhawan, New Delhi-110002.
5. Regional Director, Employees State Insurance Corporation, Panchadeep Bhawan, Bhawani Singh Road, Jaipur.
6. State Of Rajasthan, Through Its Principal Secretary, Medical Education Department, Government Of Rajasthan, Secretariat, Jaipur-302005.
7. National Medical Commission, Through Its Secretary, Pocket-14, Sector-8, Dwarka, Phase-I, New Delhi.
8. National Testing Agency, Through Its Chairperson, C-20, 1A/8, Sector-62, Iitk Outreach Centre, Noida-201309.
9. Raffles University, Through Registrar, Neemrana, District Alwar.

----Respondents

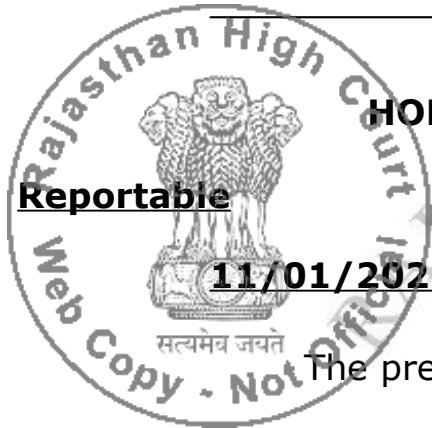




For Petitioner(s) : Mr. Pushpendra Pal Singh Tanwar,
Adv. on behalf of Mr. Shobhit Tiwari,
Adv.

For Respondent(s) : Mr. Divyesh Maheshwari, Adv.
Mr. Angad Mirdha, Adv.
Dr. Arjun Singh Khangarot, Adv.
Dr. Vibhuti Bhushan Sharma,
Additional Advocate General with
Mr. Harshal Tholia, Adv.

[all through video conferencing]



HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Reportable

Order

The present writ petition has been filed by the petitioners i.e. petitioner No.1 who is a candidate and ward of insured person for the purpose of admission in MBBS/BDS Under Graduate Courses and petitioner No.2 is the father of the petitioner No.1 claiming himself to be insured person as per the provisions contained in the Employees' State Insurance Act, 1948.

The grievance raised in the present writ petition is in respect of not treating the petitioner No.1 eligible for the purpose of admission as ward of insured person and order dated 04.10.2021 issued by the respondent-Corporation is also put to challenge whereby the petitioner No.1 has not been extended benefit as the petitioner No.2 is said to be not insured person on 31.03.2021.

The facts of the case in nutshell are that the National Testing Agency issued a Public Notice inviting Online Applications for National Eligibility Cum Entrance Test [(NEET (UG))] 2021 for admission to the undergraduate medical courses.



The Information Booklet was issued containing detailed information and as per the Information Booklet, the eligibility criteria to appear/admission was provided.

The petitioner No.1 finding himself to be eligible in terms of notice in Information Booklet applied online for NEET (UG) 2021 and he was issued admit card in EWS category.

The petitioner appeared in the examination and result was declared on 01.11.2021 and petitioner is said to have secured 97.4779718 percentile score and secured 562 marks out of 720 with an All India Rank 38661.

The petitioner has pleaded that on 13.09.2021, Employees' State Insurance Corporation (hereinafter referred to as "the ESIC") issued an admission notice for admission of wards of insured persons (IPs) in UG Courses and it provided that there shall be insured persons quota for admission in MBBS/BDS Course in favour of those candidates, whose either parent is insured person as on 31.03.2021 and they must have insured person certificate and the candidate must have ward of insured person certificate. The said notice further reveals that Clause No.7.10 provided that the critical date for examining eligibility for insured person (IP) will be 31.03.2021 and Clause No.5.2.2(b) specified that candidate must have valid Ward of IP Certificate issued by the concerned Regional Director/SRO.

The petitioner No.2 has pleaded that the petitioner No.2 being father of the petitioner No.1 had worked on the post of Lab Assistant at MDVM (Parle) School, Neemrana, Alwar from 01.01.2017 to 06.05.2020 and while working with such an employer, the ESI contributions were regularly deposited by the employer and his account was active. It is pleaded that on account



of COVID-19 situation and direct impact upon school functioning, the petitioner No.2 was not continued and as such the petitioner No.2 got an employment on the post of Lab Assistant in Raffles University, Neemrana and by issuance of an appointment order dated 03.03.2021, the petitioner No.2 is said to have joined on the same day and he has placed on record the attendance register as Annexure-9 to the writ petition.

The petitioner No.2 has pleaded that Raffles University also issued the certificate showing the working of the petitioner No.2 as Lab Assistant from 03.03.2021. The petitioner No.2 has also placed on record his pay slip of March, 2021 and his bank statement. The pay slip reflects that Rs.148/- were deducted towards ESI contribution and he was paid gross salary of Rs.21,000/- and after deduction his net pay was Rs.19,497/-.

The petitioner No.1 applied for issuance of Ward of Insured Person Certificate and submitted required documents on 23.09.2021 and on the same day, the petitioner No.2 also applied to ESIC Jaipur for issuance of Ward of Insured Person Certificate in favour of petitioner No.1.

The petitioners have pleaded that on 04.10.2021, the application of petitioner No.1 was rejected on the ground that the petitioner No.2 was not an insured person on 31.03.2021.

The petitioners have pleaded that when they downloaded the details of insured persons from Portal of ESIC, they found that current date of appointment of petitioner No.2, is incorrectly shown as 13.05.2021 instead of 03.03.2021.

The petitioners are said to have given different representations to the concerned Authorities for issuance of



proper certificate, however, when there was no response from the respondents, the present writ petition has been filed.

Learned counsel for the petitioner-Mr. Pushpendra Pal Singh Tanwar appearing on behalf of Mr. Shobhit Tiwari, Adv. has made following submissions:-

(1) The Clause No.7.10 of the Admission Notice dated 13.09.2021 provides that eligibility of insured persons for availing benefits under the Insured Persons Quota for their Ward was 31.03.2021 and since the petitioner No.2 was insured person as per the Act of 1948 as on 31.03.2021, as such the petitioner No.1 was eligible for availing benefit under the Insured Persons Quota.

The petitioner No.2 since was in employment from 03.03.2021 and if employer had made deduction from the salary of the petitioner No.2, the petitioner No.2 would be treated to be insured person as on critical date of 31.03.2021.

(2) The date of employment, as taken by the respondent-Corporation of petitioner No.2 with effect from 13.05.2021, is a wrong act on the part of respondent-Corporation and only if contribution was subsequently given by the employer and deposited with the ESIC, the same would not result into depriving the petitioners from the benefit of insured person. The error of employer cannot come in the way of getting benefit to the insured person and relevant date would be the deduction of the contribution and not depositing the same by the employer to the Corporation.

(3) The notice dated 13.09.2021 filed as Annexure-19 with the rejoinder, provides in Clause 8.3.10 that bonafide status of IPs who have registered after 31.03.2021 but claim benefit prior to 31.03.2021, may be ensured by the Certificate issuing Authority



and as such even if the status of the petitioner No.2 has been registered after 31.03.2021, the same cannot result into depriving the petitioners from benefits, as the benefit is claimed on the basis of deduction of the contribution prior to 31.03.2021.

(4) Learned counsel submitted that issue with regard to the non payment of contribution and action or non-action of the employer to deposit the contribution has been considered by the Apex Court in the case of **Bharagath Engineering Vs. R. Ranganayaki and Ors., 2003 (2) SCC 138.**

(5) The similar controversy has also been examined by the Kerala High Court in **WP (C) No.17305 of 2018 (Hari R. Nair & Anr. Versus The Director General & Ors.)** by judgment dated 04.07.2018.

Learned counsel-Dr. Arjun Singh Khangarot appearing for the respondent-ESIC has submitted that the action of the respondents in denying certificate to the petitioners is justified as the admission notice dated 13.09.2021 in Clause 8, clearly provides in its note that critical date for eligibility under IP Quota would be 31.03.2021 i.e. only a person who is a insured person as per the Act on 31.03.2021, would be eligible for availing benefit for Insured Persons Quota for his/her child/children.

Learned counsel for the respondent-ESIC submitted that since on the critical date of 31.03.2021, the petitioner No.2 was not an insured person and as such no benefit could have been conferred.

Learned counsel for the respondent-ESIC further submitted that as per Para 8 in the reply, the second employer of the petitioner No.2 had shown the date of appointment of the



petitioner No.2 as 31.05.2020 (date of registration 09.06.2020) and the date of last working day was 30.11.2020.

The respondents have further pleaded that the employer had shown the date of appointment of the petitioner No.2 as 13.05.2021 while making registration on 22.05.2021 and both the employer of the petitioner No.2 during the period from April 2020 to November 2020, deposited contribution for a total period of 42 days and therefore as on 31.03.2021, the petitioner No.2 does not fall within the definition of Insured Person.

Learned counsel-Mr. Angad Mirdha and Mr. Divyesh Maheshwari appearing for the respondents submitted that the dispute in the present petition is in respect of not treating the petitioners eligibility as insured persons and their ward and as such, this Court is required to decide the controversy after taking into account the pleas raised by the contesting respondents.

I have considered the submissions made by the learned counsel for the parties.

This Court finds that the definition of insured person is given in Section 2 (14) of the Employees' State Insurance Act, 1948 and insured person means a person who is or was an employee in respect of whom contributions are or were payable under the Act and who by reason thereof, is entitled to any of the benefits provided by this Act.

This Court further finds that Section 39 of the Act provides about the contribution and as per clause (a) of sub-section (5) if any contribution payable under the Act is not paid by the principal employer on the date on which such contribution has become due, he is liable to pay simple interest at the rate of 12% per annum or



at such higher rate, as may be specified in the regulations, till the date of its actual payment.

Amount of interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I.

This Court further finds that Section 68 of the Act deals with the rights of Corporation where a principal employer fails or neglects to pay any contribution and provides that if any principal employer fails or neglects to pay any contribution under the Act which he is liable to pay in respect of any employee and by reason thereof such person becomes dis-entitled to any benefit or entitled to a benefit on a lower scale, the Corporation on being satisfied that the contribution should have been paid by the principal employer, may pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer or twice the amount of the contribution.

The bare reading of aforesaid provisions clearly provides that the insured person is not only the person who has paid the contribution but also includes a person whose contribution is payable and not actually paid due to any reason, like delay, on the part of employer, etc.

This Court further finds that it is the duty of the principal employer to pay the contribution under the Act on the date when it becomes due and if he fails to do so, the Corporation has power



to recover the same from the principal employer even by charging interest.

This Court further finds that if there is a neglect on the part of an employer, as per provision contained in Section 68, the person cannot be declined the benefits or his entitlement if the employer has failed to deposit the contribution.

This Court finds that in the present facts of the case, the registration prior to 31.03.2021 is also not very crucial and important and as per Clause 8.3.10 of notice dated 13.09.2021, the status of IPs who were registered after 31.03.2021 but claim benefit prior to 31.03.2021 may be ensured by the Certificate issuing Authority.

The facts in the present case show that the petitioner No.2 was employed with the second employer on 03.03.2021, his pay slip for the month of March 2021 also shows that ESI deduction was made of Rs.148/- from his salary and the bank statement along-with pay-slip for the month of March, 2021 also shows that the petitioner No.2 had received the salary after the deduction of the ESI Contribution.

This Court is not inclined to accept the argument of the learned counsel for the respondents that since the contribution was not deposited by the employer with the ESI Corporation and as such, the petitioner No.1 will not be entitled for issuing certificate of Ward of Insured Persons. The non-deposit of contribution in spite of deduction will not make the person dis-entitled for the benefit of ward of insured person if the insured person had paid the contribution to his employer prior to 31.03.2021.



This Court also finds that merely receiving the contribution, subsequently after 31.03.2021, by the ESI Corporation and some information being furnished about employment date of the insured person showing it to be contrary to the record of the contribution, will not deprive insured person benefits under the Act.

This Court finds that the Apex Court in the case of Bharagath Engineering Vs. R. Ranganayaki and Ors. (supra) has clearly held that the employer cannot be heard to contend that since he had not deducted the employee's contribution on the wages of the employee, he will not be liable. The Apex Court has held that Section 38 of the Act, casts a statutory obligation on the employer to insure its employees and the date of commencement has to be from the date of appointment of the concerned employee.

This Court also finds that the Kerala High Court in the case of Hari R. Nair & Anr. Versus The Director General & Ors. (supra), has also considered the similar issue and has found that the Corporation cannot deny the otherwise eligible insured person, the certificate on the premise employer contributed or filed the returns late.

This Court accordingly finds that the respondent-Corporation has acted arbitrarily in issuing the order dated 04.10.2021 and accordingly, the same is quashed and set aside.

The petitioner No.1 is held entitled for grant of status as ward of insured person for the purpose of admission in ESIC quota.

The respondent-Corporation would issue the necessary certificate to the petitioner No.1 within the shortest possible time and preferably within 5 (five) days from the date of this order.



The petitioner thereafter would be eligible to participate in the counselling process for the purpose of admission in ESI quota and if he finds his merit and eligibility, his case will accordingly be considered by the respondents for the purpose of admission.

Consequently, the present writ petition stands allowed.

(ASHOK KUMAR GAUR),J



Ramesh Vaishnav /86

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