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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 03.09.2024
Judgment pronounced on: 10.09.2024

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W.P.(C) 12260/2024 & CM APPL.50952-54/2024**DR ANKIT SHARMA & ORS.**

....Petitioners

Through: Mr. Gautam Narayan, Ms. Asmita Singh and Mr. Taha Yasin, Advocates
 versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Hemant Kumar Yadav, Senior Panel Counsel with Mr. Rajat Sikri, GP for UOI
 Mr. Shlok Chandra, St. Counsel with Mr. Sankalp Sharma, Mr. Sushant Pandey, Advocates and Mr. Dinesh Soni, SSO, ESIC

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W.P.(C) 12261/2024 & CM APPL.50955-57/2024**DR. BARUN KUMAR SINGH & ORS.**

....Petitioners

Through: Mr. Gautam Narayan, Ms. Asmita Singh and Mr. Taha Yasin, Advocates
 versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Umang Chopra, Senior Panel Counsel with Ms. Medha Chopra, Advocate and Mr. Karan Malhotra, GP for R-1



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Mr. Shlok Chandra, St. Counsel with
Mr. Sankalp Sharma, Mr. Sushant
Pandey, Advocates and Mr. Dinesh
Soni, SSO, ESIC

+ **W.P.(C) 12264/2024 & CM APPL.50963-65/2024**

DR ANKIT KUMAR SHAHI & ORS.

....Petitioners

Through: Mr. Gautam Narayan, Ms. Asmita
Singh and Mr. Taha Yasin, Advocates
versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Mimansak Bhardwaj, Senior
Panel Counsel with Mr. Chetan
Jadon, GP, Mr. Sunny Chhoankar,
Mr. Pradeed Baisoya, Ms. Vidya
Mishra, Mr. Harsh Vardhan Singh
Rajawat, Ms. Shivangi Rajawat,
Advocates for R-1/UOI
Mr. Shlok Chandra, St. Counsel with
Mr. Sankalp Sharma, Mr. Sushant
Pandey, Advocates and Mr. Dinesh
Soni, SSO, ESIC

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

GIRISH KATHPALIA, J.:

1. These three writ petitions have been filed under Article 226 of the Constitution of India to assail common order passed by the Central

W.P.(C) 12260/2024 & connected petitions

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Administrative Tribunal, Principal Bench, New Delhi in three Original Applications of the present petitioners are taken up together, the factual and legal matrix being similar. On the very first date of hearing, respondents entered appearance through counsel and at request of both sides, final arguments were heard at the initial stage itself.

2. Briefly stated, circumstances relevant for present purposes as pleaded in the petitions are as follows.

2.1 The present petitioners are dentists by profession and at the time of joining the course of Bachelor of Dental Surgery (Batches of 2014-19, 2015-20, 2016-21 & 2017-22) in the Employees State Insurance Corporation Dental College and Hospital, Rohini, Delhi (hereinafter referred to as “the ESIC”), they submitted their individual service bonds in favour of the ESIC in lieu of the ESIC agreeing to incur the expenditure for their education.

2.2 Those service bonds involved in WP(C) 12260/2024 stipulated that the petitioners of the said petition would have to mandatorily serve the ESIC for a period of three years after passing the said course, failing which they would be liable to pay to the ESIC the bond amount of Rs. 10,00,000/- each with interest at a rate of 15% per annum. Those service bonds involved in WP(C) 12261/2024 and WP(C) 12264/2024 stipulated that the petitioners of the said petitions would have to mandatorily serve the ESIC for a period of five years after passing the said course, failing which they would be liable to



pay to the ESIC the bond amount of Rs. 7,50,000/- each with interest at a rate of 15% per annum.

2.3 The policy regarding tenure of those service bonds was revised from time to time by the ESIC. Finally, by way of communications dated 28.07.2020, followed by 30.03.2021, the ESIC instructed all its Institutions to reduce the bond tenure to one year.

2.4 However, after completion of their BDS course, none of the petitioners was called upon by the ESIC to render services nor any of the petitioners approached the ESIC for the said purpose. Some of the petitioners proceeded further with higher studies.

2.5 By way of email dated 03.08.2023, the ESIC called upon the petitioners to render their services in terms with the revised bonds for a period of one year. In pursuance of the said communication, the petitioners joined the service of the ESIC, where they continued to serve till the date of institution of their respective Original Applications in the Tribunal and Writ Petitions in this Court.

3. Against the above backdrop, the petitioners filed three Original Applications seeking quashing of communication dated 30.03.2021 and permission to serve the full tenure of five/three years in terms with the bond conditions. By way of order impugned in the present writ petitions, the



learned Tribunal dismissed the Original Applications of the petitioners. The relevant portion of the impugned order is extracted below:

“10. The applicants joined the Corporation as students to pursue the undergraduate course and at the relevant point of time, the applicants signed the bond, to serve the respondents for five years, in view of the expenses made by the Corporation to fund their education and in case, the applicants did not serve the respondents for five years, they were liable to pay an amount of Rs. 7,50,000/-. It is submitted in OA No. 750/2024, neither the applicants approached the respondents to confirm if their services were needed nor did the respondents seek the services of the applicants, therefore they proceeded to pursue their Master Degree. It is also submitted that legal notice has been responded to by the respondents and the same has been assailed by the applicants in the OA 750/2024.

11. We have perused the bond signed by the applicants, In terms of the same, the respondents were obliged to seek the services of the applicants, if required that is to say need basis. Evidently, the respondents did not require the services of the applicants at the relevant point of time and therefore, the applicants did not serve the respondents. During the interregnum, the tenure of the service bond has been reduced considerably from five years to three years and thereafter to one year. Only after the revised instructions were issued, the respondents sought the services of the applicants. It is clarified that the applicants' services were sought on 05.08.2023 and by then, the Corporation had issued revised instructions with respect to bond period to one year and the applicants have joined on different dates in pursuance of offer extended to them after 05.08.2023. Since the revised conditions dated 28.07.2020 were operative, when the applicants joined, according to us, they were obliged to serve only for about one year.

12. Learned counsel for the applicants has submitted that the applicants have not signed any new bond in pursuance to their employment offered on 05.08.2022. Be that as it may, the instructions changed in the interregnum, the service bond signed by the applicants at the relevant point of time ceases to exist after the expiry of five years and the same was not operated upon by both the respondents and the applicants.”



4. During arguments, learned counsel for petitioners took us through the above background and the relevant documents to contend that the order impugned in the present petitions is not sustainable in the eyes of law. It was argued on behalf of petitioners that once the respondents had accepted the service bonds for tenure of five/three years, they had no authority to unilaterally alter tenure of service, reducing the same to one year. Learned counsel for petitioners contended that the service bonds are basically contract between the ESIC and the petitioners, therefore, the petitioners have a right to continue in the employment of ESIC for a period of five/three years from the date of their joining the service. In support of his arguments, learned counsel for petitioners placed reliance on the judgments in the cases titled *Adeeba Asrar vs All India Institute of Medical Sciences*, 2022 SCC OnLine Del 1780; *Dr. K. Ashwarya vs Union of India*, 2020 SCC OnLine Mad 9304; *Hemant Kumar Verma & Ors vs Employees State Insurance Corporation & Ors.*, 2022 SCC OnLine SC 924; *Association of Medical Superspeciality Aspirants & Residents & Ors vs Union of India & Ors*, (2019) 8 SCC 607; *Krishna Rai & Ors vs Banaras Hindu University & Ors*, (2022) 8 SCC 713; *Manuelsons Hotels Pvt. Ltd vs State of Kerala & Ors*, (2016) 6 SCC 766; and *State of Jharkhand vs Brahmaputra Mettalics Ltd.*, (2023) 10 SCC 634.

5. On the other hand, learned counsel for respondents supported the impugned order and contended that the present petitions are devoid of merits. Learned counsel for respondents repelled the rival contention to



treat the said service bonds as a contract between the ESIC and the petitioners. It was contended on behalf of respondents that the ESIC is well within its rights to reduce the tenure of service in terms with the said bonds.

6. Thence, the issue before us is as to whether the subject service bonds can be read in a manner as to create a right to employment in the petitioners.

7. It would be apposite to examine the wordings of the said bonds, which are extracted below:

BOND

(Total value of Rs 100/- Stamp Paper)

(FOR BDS & MBBS STUDENTS)

TO KNOW ALL MEN BY THESE PRESENTS THAT We, _____ son/daughter/wife of _____ residing at _____ (herein-after called the Bounden) and

(1) Shri _____ (Parents/Guardian) residing at _____ (Here enter address) (hereinafter called 'the surety') do hereby **bind ourselves** and each of us, our and each of our heirs, executors and administrators jointly and severally to pay to the Employee's State Insurance Corporation (hereinafter referred to as 'the Corporation') on demand the total amount of Rs 7,50,000 (Rupees Seven lakh fifty thousand only) the amount spent by Corporation for their studies with 15% interest as fixed by Corporation.

Signed this Day of in the year by the bounden Shri/Smt

Signature

In the presence of Witness:

1. 1. Signed by bounden (Name & Address)
(Name & Address with official seal)

2. 2. Signed by Shri/Smt (The Surety)
(Name & Address) (Residential Address with proof is compulsory)

WHEREAS the Bounden undergo MBBS/BDS in Corporation Medical College/Dental College in the merit quota for the duration of the



course as prescribed by Medical Council of India/ Dental Council of India

AND WHEREAS, the Corporation have agreed to incur the expenses on condition that after successful completion of the course of study within the prescribed period **the bounden shall serve the ESI Corporation/ESI Scheme** for a period of five years in any institution of the Corporation/Scheme any where in India, **if the Corporation requires** and also subject to the terms and conditions hereinafter appearing and **the bounden and the sureties have agreed to the same.**

NOW the condition of **the above written obligation** is that in the event the Bounden after successful completion of the Graduate course of study to which he/she was selected, fails to serve the Corporation for period of five years, **if required by the Corporation**, the Bounden and sureties shall forthwith pay to the Corporation for violation of conditions, on demand the total amount of Rs 7,50,000/- (Rupees Seven lakh fifty thousand only) the amount spent by the Corporation for their studies along with 15% interest as fixed by the Corporation. On the quantum of amount payable by the Bounden and the sureties, the decision of the Corporation shall be final and legally binding on the bounden and sureties and upon the payment of such sum the above written obligation shall be discharged.

PROVIDED further that the bounden and the sureties do hereby agree that if the Bounden fails to serve the Corporation for a period of five years, **if Corporation requires**, it may be construed as 'professional misconduct' and the fact reported to the Medical Council of India /Dental Council of India for suitable action including cancellation of Registration by the Council.

PROVIDED further that the bounden and the surety do hereby agree that all sums found due to the Corporation under or by virtue of this bond shall be recovered jointly and severally from them and their properties movable and immovable as if such dues were arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force or in such other manner as the Corporation may deem fit.

The liabilities of the sureties under this Bond is Co extensive with that of the Bounden and shall not be affected by the Corporation giving time or any other indigence to the bounden of **by the**



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Corporation varying of the terms and conditions herein contained,

*Signed thisDay of in the year by the bounden
Shri/Smt.*

Signature

In the presence of Witness:

*1. 1. Signed by bounden (Name & Address)
(Name & Address with official seal)*

*2. 2. Signed by Shri/Smt (The Surety)
(Name & Address) (Residential Address with proof is compulsory)*

***Dean/Administrative Officer of ESIC Medical College/ESI
PGIMSR/Dental College will sign as witness.***

(emphasis supplied)

8. The email dated 03.08.2023 (printout whereof has been filed by the petitioners at pdf 288 of W.P.(C) 12260/2024) issued certain clear instructions to the petitioners. Clause 4 of the said instructions specifically clarified as under:

“4. Bond service will be for ONE YEAR ONLY. After one year, the candidates will be relieved from the bond service irrespective of the bond duration they have signed. No extension will be given.”

(emphasis in capital letters as in the original document)

9. The salient features of the said service bond, as reflected from the above extract are that it is a unilateral document executed by the petitioners and their respective sureties; that the Dean/Administrative Officer of ESIC Medical College/ESI PGIMSR/ Dental College would sign the same as a witness only and not as an executor party; that the said bonds were got executed from the petitioners in lieu of the expenses incurred by the ESIC on education of the petitioners; that the said bonds clearly stipulate the



monetary consequences in case the executor of the bond refuses or fails to serve the ESIC; that the said bonds even implicitly, what to say of explicitly, do not stipulate any duty on the part of the ESIC to avail or to seek services from the executors thereof, much less to provide services to the executors; and that as is obvious, unlike in the case of the executors, the said bonds do not stipulate or even contemplate any consequence, monetary or otherwise befalling the ESIC in case services of the executors are not availed of.

10. That being so, we are of the clear view *interalia* that the said bonds do not and cannot create any right to employment in the petitioners. The petitioners having already enjoyed benefit in the form of expenses incurred by the ESIC on their education, grant of right to employment in them on the basis of the said bonds would be granting them double benefit, which is nowhere contemplated in the said bonds or justified in any manner.

11. Merely because at a subsequent stage the ESIC opted to reduce the service period from five/three years to one year, it cannot be read to their detriment, much less to the benefit of the petitioners in the form of creation of right to employment under the ESIC. It was completely a matter of discretion for the ESIC to avail services of the bond executors for any period depending upon the requirement, though that period could not be more than the period of five/three years contemplated in the said bonds. By reducing the bond period to one year, the ESIC shortened the benefit which it could avail from the said bonds; and the ESIC cannot be compelled to avail



services of the bond executors for the complete bond period irrespective of their requirement. There is not even a whiff of any stipulation in the said bonds to the effect that the ESIC cannot reduce the benefit in terms of tenure they want to avail out of the said bonds.

12. Besides, assumably if the petitioners felt that joining services with the ESIC for a period of one year would block their career to that extent, they could have refused to join services and could have resisted to pay bond amount to the ESIC claiming that either they would work for five years or not at all. But that was not done.

13. The petitioners themselves have always been conscious that the said bonds do not create right to employment in their favour. That is the reason why none of them claimed or even sought employment from the ESIC immediately after completion of their respective course. Not just this, the petitioners joined services with the ESIC specifically for a period of one year. Although the petitioners did submit a representation to the effect that the period of service ought to be five/three years, but that representation having met no positive response, they abandoned the same and joined the one year service with the ESIC.

14. Coming to the judicial precedents cited on behalf of the petitioners, none of those is of any help to the petitioners, as discussed hereafter.



14.1 In the case of ***Adeeba Asrar*** (supra), the only issue was as to whether a petition for quashing of the advertisement for recruitment of doctors is maintainable directly before the High Court, without first approaching the Administrative Tribunal. In the six paragraph order, the learned Single Judge of this Court answered the issue in negative.

14.2 In the case of ***Dr. K. Ashwarya*** (supra), the petitioner, working as Junior Resident under ESIC Residency Scheme, having completed her MBBS raised a grievance that she is required to compulsorily work for five years on the basis of service bond executed by her under compulsion and the same is in contravention of her fundamental rights. The learned Single Judge of the Madras High Court dismissed the writ petition on the ground that the jurisdiction to entertain the dispute lies with the Central Administrative Tribunal. In any case, none of the petitioners herein claim that the service bonds in question were got signed under duress.

14.3 In the case of ***Hemant Kumar Verma*** (supra), the issue before the Hon'ble Supreme Court was parity *qua* service conditions between the in-service doctors and the doctors serving under service bonds. The issue was decided in negative.

14.4 In the case of ***Association of Medical Superspeciality Aspirants*** (supra), the issue before the Hon'ble Supreme Court was the constitutionality of mandatory service bonds, as imposed in superspeciality



courses by a number of States. After elaborate analysis of the contentions advanced before High Courts of the each of the concerned State, the Hon'ble Supreme Court upheld the constitutionality of such mandatory service bonds. The apex court held that a policy decision taken by the State Governments to utilize the services of doctors who are beneficiaries of government assistance to complete their education cannot be termed arbitrary; that the period of compulsory service and the exit should be reasonable; and that such mandatory service bonds are not a restraint on profession of the doctors. None of these is the issue in the cases before us.

14.5 In the case of ***Krishna Rai*** (supra), the issue before the Hon'ble Supreme Court was as to whether the doctrine of estoppel and acquiescence would prevail over statutory service rules prescribing the procedure for promotion of Class IV employees to Class III, working in the Banaras Hindu University. That is completely distinct from the issue before us.

14.6 In the case of ***Manuelsons Hotels Pvt. Ltd.*** (supra), the issue before the Hon'ble Supreme Court was the scope of the doctrine of promissory estoppel, which again is not the issue involved in the present case, it being nobody's case that by way of the subject service bonds, the ESIC had promised to give employment to the petitioners. As described above, in the present case, the said bonds encumbered obligation only on the petitioners to serve the ESIC according to the requirement of the latter.



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14.7 In the case of *Brahmaputra Mettalics Ltd.* (supra) also the issue involved was the scope of promissory estoppel in the situation where the State Government had promised certain rebates to certain industries but did not notify the rebates and the Hon'ble Supreme Court held the State Government bound to grant those rebates. In the present case, to repeat, there was no promise of the ESIC to provide employment to the petitioners.

15. In view of above discussion, we are unable to find any infirmity in the impugned order, so the same is upheld and the present petitions are dismissed.

GIRISH KATHPALIA
(JUDGE)

SURESH KUMAR KAIT
(JUDGE)

SEPTEMBER 10, 2024/as