

(2024) 11 CAT CK 0001

Central Administrative Tribunal Ernakulam Bench, Ernakulam

Case No: Original Application No. 180, 00374 Of 2024

Dr. Abhirami Sreechith & Ors

APPELLANT

Vs

Secretary, Ministry Of Labour
And Employment Department,
Government Of India, New
Delhi-110001 & Ors.

RESPONDENT

Date of Decision: Nov. 4, 2024

Hon'ble Judges: Sunil Thomas, Member (J); V. Rama Mathew, Member (A)

Bench: Division Bench

Advocate: Sunil V. Mohammed, Tom Pious, Thasneem Ashraf, Sreejith.N, T.V. Ajayakumar

Final Decision: Dismissed

Judgement

Sunil Thomas, Member J

1. All the applicants had attended MBBS course at Employees State Insurance Corporation (ESIC) medical college and PGIMSR, Chennai under

'ESIC Residency Scheme'. Under the scheme, such candidates are admitted to study in the college at subsidized fees rate, on executing a bond, i nter

alia, undertaking that after completion of their studies, they will undertake bond services at the ESIC hospitals as Junior Residents for the period

prescribed in the bond. Accordingly, the applicants executed bonds at the time of their admission to the MBBS course to the medical college, i nter

alia, undertaking to render bond service as Junior Resident (UG) in the ESIC hospitals for 3 years. The applicants accordingly underwent studies in

the 2017-22 batch. After their studies, they joined the ESIC hospitals in Kerala on 31.07.2023.

2. Upto 2016, the prescribed bond period was 5 year for MBBS/BDS batches. In 2017 the bond period was reduced to 3 years by Annexure A-4

document. In 2020, by Annexure A-5 dated 28.07.2020, bond period was revised giving option to existing Junior Residents either to continue for the

entire bond period (5 years or 3 years as the case may be) or to end the bond service after one year. If no such option was exercised, they would be

governed by the original bond condition. The applicants claim that since they decided to continue for 3 years they did not avail the option. Accordingly,

they did not exercise the option. While so, by Annexure A-6 memorandum dated 10.08.2023, issued by the Headquarters of ESIC, they were informed

that Junior Residents who have completed one year of bond service shall be relieved without any obligation and the bond of Junior Residents who had

joined service in 2023 and subsequently shall be relieved compulsorily on completion of one year bond service, irrespective of the bond period.

According to the applicants, Annexure A-6 order of compulsory termination of bond service, overlooking the original bond, was illogical, arbitrary,

unreasonable and per se illegal. Annexure A-7 request by them was submitted to extend the bond period of Residents. Since it was not responded

favourably, the applicants have approached this Tribunal and sought relief as follows:

(i) call for the entire records connected to Annexure A-6 and set aside the same to the extent it instructs to compulsorily relieve the bond of JR's who

have joined bond service in 2023 in ESIC institutions on completion of 1 year bond service, irrespective of the bond duration signed;

(ii) declare that the applicants are entitled to continue till the already signed bond duration of 3 years as evident from Annexure A1 to A3 with a

facility of option prevailed as per condition No.2.4 in Annexure A5, than compulsorily relieving them upon completion of 1 year based on Annexure A6

(iii) direct the 2nd respondent to consider Annexure A-7 and another request on 04.06.2024 submitted by the 1st applicant and permit the applicants to

opt to continue on the original bond period

3. An interim order was granted after hearing both sides directing the respondents not to enforce Annexure A-6 against the applicants.

4. A detailed reply statement was filed by the ESIC denying the various contentions set up in the original application. It was stated that regular recruitment of General duty Medical Officer cadre of ESIC was done. Accordingly 890 doctors have been selected. They were expected to join in August 2024. The student junior residents cannot be accommodated. Hence they had to be returned. It was contended that the bond does not create any vested right to the applicants to claim continuation as of right. It was contended that there was no estoppel involved and plea of estoppel could not be raised against the respondents. It was contended that indemnity bonds were not service contracts and respondents was not duty bound to continue to complete the bond period. Pursuant to the policy decision taken by the ESIC, it was decided to reduce the bond period through out India from 3 to 1 having regard to the fact that most Government colleges do not have provision for compulsory service, that long period of bond was detrimental to the post - graduate studies prospect of the candidates and that greater compliance was likely with conditions acceptable to the candidates. Many PG and UG candidates have filed Court Cases against the present bond conditions. Resources of the Corporation were engaged in defending the cases, many of which were avoidable, should the bond condition favour both the Corporation and the candidates. It was also felt that a lower bond amount along with lesser period of bond would place lesser financial burden on UG level. It was also contended that bond was legally binding on the bounden and the sureties alone and there was no corresponding duty on respondents. It was contended that the applicants cannot have a legitimate expectation to continue for the entire period of bond.

5. On the basis of the above pleadings both sides were heard and documents were examined.

6. Normally, the bounden approach the Courts seeking for reducing bond period or for relieving them of the bond without penalty. However, in the case at hand, the bounden themselves have approached this Tribunal to enforce the bond period to its full period as against the ESIC. Probably, it was because the bond period prescribed mandatory minimum period of service with all service conditions applicable to a normal Junior Resident doctor.

7. The learned counsel for the applicant contended that the applicants had legitimate expectation that they will be permitted to complete the bond

period. The respondents are bound by the principle of promissory estoppel. The respondents are stopped from setting up any right than mentioned in

the bond agreement. Hence, the respondents were bound to permit them to complete the entire period prescribed in the bond.

8. Essentially, this leads to a question regarding the nature of bond. A copy of the original bond was not produced. However, a copy of the format of

bond was placed on records by the applicants themselves as in Annexure A-5(3).

9. The bond is executed by the applicant undertaking to pay ESIC the prescribed amount with interest on failure to fulfil the obligations/for violation

mentioned thereafter. It was also undertaken that the bounden and the sureties shall furnish bank guarantee for the prescribed period in favour of the

Dean of the ESIC institution in lieu of the amount within 3 months of the internship year. The bond provided that the bounden being selected to

undergo the course of study and the Corporation having undertaken to incur the expenses of condition that after such completion of the course of

study, the bounden shall serve in all the institution of the corporation or under the ESI scheme of the Government for the period prescribed therein and

subject to the terms and conditions mentioned therein.

10. Though the learned counsel for the applicants vehemently contended that the respondents were estopped by the promise and that the applicants

had a legitimate expectation and further that the ESIC was bound to permit the applicants to complete their full bond period, it is evident from the bond

itself that there is no corresponding obligation imposed on the ESIC. The terms of the bond was in the form of a unilateral undertaking from the part of

the bounden to do bond service during the period of service prescribed therein and an undertaking by the bounden and sureties to forfeit the prescribed

amount in case of premature termination. There is absolutely no corresponding duty imposed on ESIC. Evidently, it is not in the form of contract since

it is not signed by both sides and it is strictly in terms of any bond per se, unilaterally executed by one side.

11. The nature of the bond and whether it amounts to service contract enabling the applicants to enforce the terms of contract as against the ESIC

was considered in detail by the Central Administrative Tribunal, Principal Bench in favour of ESIC, which was ultimately confirmed by the decision of the Delhi High Court in Dr. Ankit Sharma and others vs. Union of India and others {WP(C) 12260/2024 and connected cases}.

12. In the above case, identical issue as one at hand, came up before the Principal Bench of the Central Administrative Tribunal, New Delhi. Though the facts were slightly different, the essential question involved was whether the respondents could unilaterally reduce the period of bond and direct the service to be brought to an end abruptly. The contention of the petitioners was that the service bonds were basically a contract between the ESIC and petitioners and the petitioners have a right to continue in service of ESIC for the period prescribed from the date of their joining service. In support of their arguments they relied on various decisions. This contention was controverted by the ESIC, which was accepted by the Principal Bench. This was under challenge before the Delhi High Court. Before the Delhi High Court the respondents contended that service bond was not a contract between ESIC and the petitioners and it was only a unilateral undertaking given by the bounden. It was contended that ESIC was well within its rights to reduce the tenure or the terms of the said bond.

13. The Delhi High Court after referring to the various decisions relied on by the applicant held that those decisions have absolutely no relevance in relation to the issue involved.

14. After referring to the service bond, it was noted that the bond prescribed that it was for one year period only. After one year the candidate would be relieved from the bond service irrespective of the bond duration they have signed. No extension will be given. Relying on it and the various clauses in the bond, the Delhi High Court concluded that it was a unilateral document executed by the petitioners and their respective sureties. The representative of the medical college/dental college would sign the same as a witness only and not as executor party. The bonds were got executed from the applicants in lieu of the expenses incurred by the ESIC on education of the petitioners. It was held that the bond clearly stipulated the monetary consequences of executors refusing or failing to serve the ESIC and that the bond, even implicitly, not even explicitly, did not stipulate any

duty on the part of the ESIC to avail or seek services from the executors thereof, much less to provide service to the executors. It was held that unlike the case of the executors, the bond did not stipulate or even contemplate any consequence, monetary or otherwise, befalling on the ESIC, in case the service of the executors were not availed for the full period.

15. On the above basis, the High Court held that the bond did not and could not create any right of employment in the petitioners. The petitioners having already enjoyed the benefit in the form of expenses incurred by the ESIC on the education, the grant of right of employment in them on the basis of the said bond would be granting them double benefit, which was nowhere contemplated in the said bond nor justified in any manner.

16. It was held that merely because at a subsequent stage ESIC opted to reduce the period, it cannot be read to their detriment, much less to the benefit of the applicant in the form of creation of right to employment under ESIC. It was completely a matter of discretion of ESIC to avail service of the bond executors for any party depending upon requirement, though that period could not be more than the period prescribed in the said bond. By reducing the bond period to one year or less than one year, the ESIC had only shortened the benefit which it could avail from the bond and the ESIC cannot be compelled to avail service 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 bond to the effect that ESIC cannot reduce the terms of tenure they want to avail out of the said bond, it was held. It was also noticed that the applicants were conscious that the bonds did not create any right of employment in their favour.

17. Evidently, the bond is only a unilateral document with certain undertakings given by the bounden. Absolutely no obligation is created on the part of ESIC. The only obligation, if any, was to permit them to undergo their course of study for MBBS/BDS at a reduced rate which ESIC has performed. In so far as service during the bond period, the bond cannot be treated as a contract of employment being not a bi-lateral agreement. It is true that various benefits available to normal employment was available to doctors employed by the ESIC. That does not take the bond service to the level of a service contract.

18. Though the learned counsel for the applicants vehemently contended that principle of promissory estoppel was applicable and that applicants had a legitimate expectation, in the light of clear finding that service bond only creates a unilateral obligation, the question of any promissory estoppel or legitimate expectation does not arise. The applicants were conscious that it did not create any obligation on the respondents. They were fully aware that they were availing benefit of a full time employment by undergoing service engagement. Bond encumbered obligation only on the petitioners to serve the ESIC according to the requirement of the latter. The concept of promissory estoppel will arise only when a promise is made by the opposite side based on which the other side alters his position to his detriment. No such promise arise in the case at hand.

19. Having considered this we are inclined to hold that the bond service cannot be raised to the level of contract of employment and no obligation is cast on the respondents to extract service of the employees for the full period, which has been undertaken by the applicants unilaterally. Hence, we find no reason to grant any relief. The Original Application fails and is dismissed. No costs. The interim order stands vacated.

(Dated 4th November 2024)