

**Reportable****IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION****Writ Petition (Civil) No 444 of 2022****Hemant Kumar Verma & Ors****.... Petitioners****Versus****Employees State Insurance Corporation & Ors****....Respondents****J U D G M E N T****Dr Dhananjaya Y Chandrachud, J**

1        The respondent -Employees State Insurance Corporation<sup>1</sup> - is a statutory body created under the Employees' State Insurance Act 1948<sup>2</sup>. Act 18 of 2010 inserted Section 59(B) in the Act of 1948 which stipulates that the Corporation may establish medical colleges, nursing colleges, and training institutions for its employees to improving the quality of services provided under the Employees' State Insurance Scheme. The petitioners are junior residents who have completed their undergraduate medical course at medical institutions run by the ESIC. Undergraduate medical

1 "ESIC/ respondent-institute"

2 "Act of 1948"

students pursuing their education in institutions conducted by the ESIC have to serve in the institutions as junior residents. The petitioners were required to serve a five year bond as junior residents.

2 The respondent-institutions recruit Insurance Medical Officers Grade-II<sup>3</sup> through a written examination followed by an interview. ESIC provides a fifty per cent reservation for “in-service” doctors in the post-graduate seats available in medical institutions run by ESIC. While the post of IMO-II is included within the ambit of ‘in-service’ doctors, the junior doctors are not. The respondent issued a notice on 10 November 2021 inviting applications from eligible ‘in-service’ doctors of ESI Medical colleges. The petitioners made representations on 11 February 2022, 4 March 2022, and 25 April 2022 to the respondent-institution seeking to be considered in the ‘in-service’ quota for DNB courses. Since there was no response from the respondent-institution, the petitioners have invoked the jurisdiction of this Court under Article 32. The petitioners’ have sought the following prayers:

“(i) Issue a writ of Mandamus or any other appropriate Writ, order of direction to Respondents to declare that the Petitioners/Junior Resident Doctors are eligible “in-service” doctors of ESIC/ESIS for the purposes of inclusion in reservation for PG courses.

(ii) Issue writ of mandamus or any other appropriate writ, order, direction to the Respondents to extend the 50% “in-service” doctors reservation for PG courses to the Junior Resident Doctors serving in ESIC/ESIS institutions.”

3 The grievance of the petitioners is that that junior resident doctors and persons working as IMO-II possess the same qualifications, entitlements, duties, and responsibilities. However, while reservation in postgraduate education is provided to the latter in the “in-service” category, it is not provided to the former.

3 ‘IMO-II’

4 The Deputy Medical Commissioner (Medical Education) has filed an affidavit before this Court on behalf of the respondent explaining the distinction between the junior resident doctors, such as the petitioners, and the regular medical officers who are recruited by the ESIC. The affidavit states as follows:

(i) Candidates who pursue their undergraduate degree courses in these colleges are required to execute a bond to serve the ESIC hospitals for a stipulated period. Until 2017, the period of the bond was five years, after which it was reduced to three years.

(ii) By a Memorandum dated 28 July 2020, the period of the bond was reduced to one year for undergraduate MBBS/BDS students at the ESIC medical and dental colleges. Para 2 of the Memorandum, *inter alia*, contains the following stipulation:

“2. The reduction in Bond duration and Bond amount would be prospective per-se, but in the following manner:

2.1 The benefit of reduced Bond period & Bond amount in lieu, would also be extended to (i) all existing students (MBBS/BDS); (ii) Fresh UG (MBBS/BDS) pass-outs; and (ii) UG (MBBS/BDS) pass-outs already serving ESIC under Bond.

2.2 In case of pass-outs already serving under Bond, if the length of service rendered is in excess of 01 year, they may be relieved without payment to ESIC for left over Bond period.”

(iii) The petitioners completed their one year compulsory bond period between 2019 and 2020. Though they were not under any compulsion to serve beyond a year, as stipulated in the Memorandum dated 28 July 2020, they have continued to serve of their own volition.

(iv) The petitioners cannot be equated to IMO-II doctors to claim the 50% reservation available to ‘in-service’ doctors for the following reasons:

- (a) Regular medical officers in ESIC are recruited by advertising vacancies through the Recruitment Regulations of the post;
- (b) The petitioners were serving the bond condition after completion of their studies in ESIC medical colleges. Thus, they are not recruited and cannot be called in-service doctors; and
- (c) The medical officers are governed by the ESIC Staff and Condition of Service Regulations 1959. The leave and other entitlements of the junior resident doctors are as stipulated in the ESIC Residency Scheme. A revised ESIC Residency Scheme was issued on 24 November 2020. Therefore, the medical officers and the junior residents are recruited under and are governed by distinct regulations.

5        We have heard Mr Sachin Patil, counsel appearing on behalf of the petitioners and Mr Manish Kumar Saran, counsel appearing on behalf of the respondents.

6        The contention of the petitioners is two-fold. *One*, the junior residents are 'in-service' doctors. They must thus be treated on parity with IMO-II doctors for the provision of reservation benefits. The qualification, entitlement, duties, responsibilities, and pay scale of the junior residents and IMO-II doctors are the same. The only difference between the two categories is the mode of appointment. While the junior residents are appointed directly because of the bond that they are serving, the IMO-II doctors are appointed through a selection process. *Two*, junior residents are eligible for 50% reservation in respondent institutions on institutional preference. The Courts have recognized reservation through institutional preference in post-Graduate medical

education in **Saurabh Chaudri v. Union of India**<sup>4</sup> and **Yatin Kuma Jasubahi v. State of Gujarat**<sup>5</sup>.

7        The petitioners completed their undergraduate courses from ESIC medical/dental colleges and have already served out their one year compulsory bond period. The reduction in the bond period which was brought about on 28 July 2020 was also extended to all existing students as well as undergraduate (MBBS/BDS) pass-outs who were serving ESIC under bond. In view of the Memorandum dated 28 July 2020, it was open to the petitioners to leave after the completion of one year of junior residency.

8        On 2 February 2018, the revised ESIC Residency Scheme for UG pass-outs was issued. The scheme provides that the duties and responsibilities of the junior residents will be fixed by the competent authority. It mentions that “they will be required to perform such work as may be needed in the legitimate interest of patient care in ESI health system (ESIS/ESIC) including Hospitals and dispensaries anywhere in India.” The memorandum further states that the pay structure for the junior residents is similar to the scale for the junior residents under the Central Residency Scheme. The IMO-II doctors are governed by the ESIC Staff and Condition of Service Regulations 1959. The crucial difference between junior residents and IMO- II is that while the former is a contractual post where the doctors are employed directly due to the bond condition on the completion of the MBBS degree, the latter is a permanent post. Therefore, the mode of appointment and tenure of the posts vary. The IMO-IIs’ who pursue their post graduate education as in-service candidates will serve the respondent institution after completion of their post-graduate course. However, in the case of junior residents, since

4 (2003) 11 SCC 146

5 (2019) 10 SCC 1

they are contractual employees who are serving the bond, they are not bound to serve the respondent-institution after the completion of their post-graduate studies. The reservation for in-service candidates is an incentive and an added benefit to the IMO-II doctors who will be serving in the respondent-institution till superannuation. In such circumstances, the argument of the petitioners that the junior residents and IMO-II doctors are at par with each other for the former to be treated as “in-service” doctors does not hold merit.

9 In **Saurabh Chaudri** (supra), a Constitution Bench of this Court approved reservation based on ‘institutional preference’ as set out in **Pradeep Jain v. Union of India**<sup>6</sup>. In **Yatin Kuma Jasubahi** (supra), a writ petition was filed challenging institutional preference in admission to postgraduate medical courses. It was the contention of the petitioners, in that case, that though institutional reservation had been upheld by this Court in **Pradeep Jain** (supra) and **Saurabh Chaudri** (supra), it would not be permissible because of the introduction of an All India examination in the form of NEET. Rejecting this argument, the three-Judge Bench of this Court held that post-graduate medical admissions through institutional preference are only made to candidates based on the rank received in the NEET examination. This Court in **Saurabh Chaudri** (supra) and **Pradeep Jain** (supra) held that institutional preference in post-graduate medical admissions is permissible and constitutional. However, this Court cannot issue a mandamus directing the respondent to conduct admissions through institutional preference. The decision of whether or not to provide institutional preference solely lies with the respondent-authority since it falls within the realm of policy.

10 On the above premises, there is a clear distinction in law between junior resident doctors and regularly recruited ESIC doctors. The in-service quota is, therefore, justifiably made available to the latter category. The petitioners cannot claim parity with regularly recruited insurance medical officers in seeking the benefit of the in-service quota.

11 For the above reasons, we find no merit in the petition. The petition is, accordingly, dismissed.

12 Pending application, if any, stands disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[A S Bopanna]

New Delhi;  
July 22, 2022