

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 103 of 2025

**The Dean in Charge, ESI-PGIMSR, ESIC Medical
College and ESIC Hospital & DCE (EZ)**

Vs.

Dr. Bijita Dutta & Ors.

For the Petitioner : Mr. Shiv Chandra Prasad.

For the Respondents : Mr. Manujendra Narayan Roy,
Mr. Biswarup Nandy,
Mr. Rajesh Kr. Shah.

Judgment on : September 12, 2025

Madhuresh Prasad, J.:

1. The Writ Petitioner was the respondent before the Central Administrative Tribunal, Kolkata Bench (hereinafter referred to in short as Tribunal). The present respondent, who was the applicant challenged the reasoned order dated 14.07.2023, issued by the Director General, Employees' State Insurance Corporation ("ESIC" in short), whereby and whereunder the Director General affirmed the recommendation of the Departmental Promotion Committee (DPC) dated 02.02.2023, finding the applicant "*unfit*" for promotion to the post of Associate Professor with effect from the date of her eligibility, i.e. 26.05.2021. The Tribunal, vide order dated 21.02.2025 passed in OA NO. 1369 of 2023, set aside

the impugned decision of the Director General ESIC, dated 14.07.2023 and directed the respondents to convene review DPC for considering grant of promotion to the applicant to the post of Associate Professor, if otherwise she is fulfilling other eligibility conditions. The Tribunal has also allowed the consequential reliefs, as a result of such decision, directed to be taken within 45 days from the date of Communication of Certified copy of the order of the Tribunal.

2. The applicant joined service under the ESIC as an Assistant Professor in the Department of Pathology on 26.05.2016 at ESI PGIMSR, Maniktala on regular basis. The applicant was desirous of pursuing the super-specialty course DM (Clinical Haematology) and sought leave for pursuing the course at Nil Ratan Sirkar Medical College and Hospital, Kolkata. The duration of the course was between 08.08.2016 and 07.08.2019. The petitioner was granted extraordinary leave for pursuing the same. Upon completion of her course the applicant resumed her services at ESI-PGIMSR, Maniktala on 08.08.2019.
3. The headquarter, issued an Office Order dated 02.11.2021, pursuant to which the applicant was relieved from Maniktala to report to ESI—PGIMSR & ESIC Medical College and ESIC Hospital ODC (EZ) Joka, Kolkata (hereinafter referred to as Joka). The applicant joined at Joka on 09.11.2021, in compliance of the Relieving Order issued by the Dean, ESI-PGIM SR, Maniktala on 08.11.2021.
4. The Employees' State Insurance Corporation (Medical Teaching Faculty Posts), Recruitment Regulations, 2015 (hereinafter in short 2015 Regulations), was framed by the ESIC with approval of the Central Government for regulating the method of recruitment to medical teaching faculty posts in the ESIC Medical Colleges. The 2015 Regulations provided the age limit, qualifications and

method of recruitment, etc. to the medical teaching faculty posts, in Column (5) and (13) of the Schedule annexed to the 2015 Regulations. The eligibility for recruitment by way of promotion to the posts of Associate Professor was stipulated in the Schedule, relevant extract of which reads:

"Promotion

Assistant Professor with five years regular service in pay band-3 Rs. 15600-39100- with grade pay of Rs. 6600 subject to satisfaction of Medical Council of India (MCI) Norms and satisfactory completion of mandatory training before consideration for promotion.

*(**Extra Ordinary leave availed for reasons other than on Medical Certificate and for study purpose, shall be excluded from the qualifying service)."*...

5. Thus the applicant, who had completed 5 years regular service as an Assistant Professor was expecting promotion to the post of Associate Professor.
6. The ESIC authorities on 06.02.2023, published a list of Doctors who were promoted as Associate Professors. The applicant's name was not figuring in the list of promoted Doctors. Being aggrieved by her exclusion in the list and denial of promotion, she preferred a detailed representation. When the representation evinced no response, she approached the Tribunal by filing OA being No. 556 of 2023, which was disposed of directing consideration, and disposal of her representation by a reasoned and speaking order, under due intimation to the applicant. In compliance of the Tribunal's order dated 28.04.2023, passed in OA No. 556 of 2023 the Director General of ESIC passed a speaking order on 14.07.2023.
7. The Director General took into consideration the fact that the DPC in its proceedings dated 02.02.2023, found the applicant "unfit" for promotion to the post of Associate Professor. The DPC found the applicant short of mandatory teaching and research experience as an Assistant Professor in concerned department, and therefore, not fulfilling the criteria of promotion. The Director

General has thus affirmed the finding of the DPC by taking into consideration the fact that the three year period of extraordinary leave (EOL for short) for the purpose of pursuing the superspeciality course cannot be considered as teaching experience on the post of Assistant Professor.

8. The length of requisite service on the post of Assistant Professor for promotion to the post of Associate Professor, specified in the 2015 Regulation was subject to satisfaction of the National Medical Commission (NMC for short) norms. The latest NMC norms as on date of eligibility (26.05.2021) is contained in the Notification dated 12.02.2020, whereby the “Minimum Qualification for Teachers in Medical Institutions (Amendment), Regulations 2019 (hereinafter in short 2019 Regulations) was published in the Official Gazette. The 2019 Regulation requires four years “*teaching and research experience*” as Assistant Professor, for promotion as Associate Professor. During the period of study, the applicant did not perform the duties of teaching on the post of Assistant Professor and, therefore, the Director was of the opinion that she did not possess the requisite teaching experience. The Director General has treated the three years’ study period as experience on the post of Senior Resident Doctor, and not teaching and research experience as an Assistant Professor. The Director General, ESIC thus affirmed the recommendation of the DPC by an order dated 14.07.2023, which was assailed by the applicant in OA 1369 of 2023.
9. Learned Advocate for the Writ Petitioner submitted that 2015 Regulations required 5 years’ regular service as Assistant Professor for promotion to the post of Associate Professor. The same, however, is made subject to satisfaction of the National Medical Council (in short NMC) Norms, which are contained in the 2019 Regulations.

10. The applicant just two months after joining the post of Assistant Professor proceeded to pursue the degree in a super-specialty subject, for her own personal benefits. She was sanctioned extraordinary leave for pursuing this course, therefore, the period was treated as “on duty”. However, the time spent for acquisition of the super-specialty degree was not concurrently to be considered as teaching experience on the post of Assistant Professor for satisfying the eligibility criteria for promotion to the post of Associate Professor.
11. The Tribunal has taken into consideration the reasons for rejecting the applicant’s promotion by a detailed consideration based on precedents on interpretation to decide the requisite length of service under the 2015 Regulation, specifying the requisite qualifications. After a detailed and elaborate consideration the Tribunal concluded that the requirement of 5 years’ regular service under the 2015 Regulations was stipulated with an unambiguous clarification that extraordinary leave availed for reasons “*other than*” medical certificate and for study purpose, “*shall be*” excluded from the qualifying services. The Tribunal thus found that the three years extraordinary leave period for study purpose in between 08.08.2016 and 07.08.2019, could not be excluded from the qualifying service. The Tribunal has failed to take into consideration the requirement of teaching experience in the 2019 Regulation.
12. In so far as the submission made by the learned Advocate for the petitioner that 2015 Regulations was subject to 2019 Regulations issued by the NMC, we find such submission to be undeniable on a plain reading of the 2015 Regulation. The 2019 Regulations prescribed the minimum qualifications for Teachers in a tabular form having 3 columns. The first column under the heading “Post” specified the teaching post for which qualifications were prescribed. The

second column under the heading “*Academic Qualifications*” specified the requisite academic qualifications. The third column under the heading “*Teaching and Research Experience*” specified the requisite length of experience in teaching and research for promotion to the post specified in the first column. The petitioner was an Assistant Professor in the Department of Pathology, which is a Broad Specialty. The requisite qualification in the table is extracted herein:

<i>Posts</i>	<i>Academic Qualification</i>	<i>Teaching & Research Exp.</i>
...		
<i>Associate Professor (5 years of Post PG experience)</i>	<i>A post graduate qualification MP/MS/DNB in the concerned subject and as per these Regulations.</i>	<i>(i) As Assistant Professor in the subject for 4 years in a permitted/approved/recognized medical college/ institution with one Research publication (only original papers, meta-analysis, systematic reviews, and case series that are published in journals included in Medline, Pubmed Central, Citation index Sciences Citation index, Expanded Embase, Scopus, Directory of Open access journals (DoAJ) will be considered). The author must be amongst first three or should be the Corresponding author.....</i>

13. As per the 2019 Regulations, the requisite length of teaching experience was four years. Since the 2015 Regulation is subject to NMC Norms, the 2019 Regulations issued by the NMC is to prevail. The applicant, therefore, is required to satisfy requirement of teaching experience on the post of Assistant Professor as per the 2019 Regulations. Only then she can be considered as possessing the requisite

service qualification for being considered for promotion as an Associate Professor.

14. The applicant's date of joining in the respondent organization is 26.05.2016.

Eligibility of the candidates was being considered as on 26.05.2021. The date of the DPC wherein the promotion was considered is 02.02.2023. Petitioner's total length of service, even on the date of DPC was more than three months short of seven years. The three year period during which petitioner pursued the superspeciality degree of DM (Clinical Haematology), was from 08.08.2016 to 07.08.2019. When the requirement in the NMC 2019 Regulations is of teaching experience, then the three-year period during which the petitioner was pursuing the superspeciality courses, cannot be taken into consideration. During this period, she did not gain any teaching experience whatsoever, rather she was acquiring knowledge during this period. Though it is not in dispute that this three-year period is to be considered as "*on duty*", at the same time, we are of the considered view that this period cannot be considered to be a period during which she has gained any teaching experience whatsoever as required under the NMC Norms of 2022.

15. The learned Advocates, representing the parties have also made submissions with reference to the Teacher's Eligibility Qualifications in Medical Institutions Regulations, 2022 (2022 Regulations for short). We, therefore, proceeded to take into consideration the teacher's eligibility qualifications in 2022 Regulations issued by the National Medical Commission in exercise of powers under Section 57 of the National Medical Commission Act 2019. These Regulations have come into force with effect from the date of publication in the Official Gazette (14.02.2022). Regulation 3.11, thereof reads:

“3.11 The period spent by the teaching faculty towards acquisition of degree in Super Specialty subject on concurrent duties/ deputation shall not be counted as teaching experience for fulfilling eligibility criteria for promotion in the concerned Super Specialty department.”

16. Mr. Prasad, learned Advocate for the petitioner submitted that from a reading of this provision, it appears that the period spent by a teaching faculty for acquiring a superspeciality degree is not counted as teaching experience for fulfilling eligibility criteria of promotion, even in the concerned superspeciality. The regulations have consistently laid down a requirement of teaching experience and not just length of service.
17. Mr. Roy, learned Advocate appearing for the applicant has strenuously urged that from reading of Clause 3.11 it is obvious that exclusion of this period from teaching experience is only in the case of promotion in the concerned superspeciality department for which the superspeciality degree is acquired by the teaching faculty. The petitioner's faculty (pathology) is not a superspeciality and, therefore, the period spent on acquiring the superspeciality degree cannot be excluded.
18. We do not find any substance in such submission advanced on behalf of the applicant so as to justify counting of the three-year period spent by the applicant in study, concurrently as teaching experience. Clause 6 of the 2022 Regulations contains the norms for faculty appointment and promotion, which has been specified in a tabular form therein. Clause 6 specifies the norms for faculty appointment and promotion in broad specialties, including the petitioner's department of pathology. For appointment or promotion to the post of Associate Professor the Table 1A in Clause 6 of the 2022 Regulations also requires teaching and research experience as Assistant Professor in the subject for four years.

19. After excluding the three-year period when the applicant was pursuing the Super Speciality Degree, from the petitioner's total length of service, as on date of eligibility, or the date of DPC, the petitioner cannot be said to be having the requisite teaching experience of even four years. The petitioner, therefore, did not have the requisite teaching experience for promotion as Associate Professor and non-consideration by the DPC, therefore, cannot be faulted with.
20. We, however, would observe that no provision in the Rules has been brought to our notice to justify treating of the period spent by an Assistant Professor, on extraordinary leave for acquiring super specialty degree, as a period which may be deemed to be experience on the post of a Senior Resident Doctor. However, this issue is not relevant. Once the period has been accepted as "*on duty*", we find no reason to further examine this issue, which is left open.
21. Our conclusion above that the petitioner's three years' period of study leave cannot be counted as teaching experience is fortified by decision of the Apex Court in the case of **V.B. Prasad v. Manager, P.M.D. Upper Primary School, reported in (2007) 10 SCC 269**. The Apex Court has held in para 13 as under:
- "13. Indisputably, the appellant was on study leave for the period 1-6-1991 to 28-2-1993. During the said period, he was not teaching. He did not gain any teaching experience during the said period. If the said period is excluded for the purpose of computing teaching experience as envisaged under Rule 45 of the Rules, the question of his being considered for promotion to the post of Headmaster would not arise. Eligibility condition must be satisfied before a person is considered for promotion/appointment in respect of a particular post."***

22 We also deem it appropriate to rely upon another decision of the Apex Court in the case of **Vivek Mudgil v. State of U.P., (2019) 2 SCC 427** : para 10 of the same report is reproduced hereunder.

"10. It is not in dispute that as on the last date of submission of applications pursuant to the advertisement issued by the Board inviting applications for appointment to the post of Principal, the appellant herein was having only 9 years 3 months of teaching experience. Even as per the notification, having regard to academic qualification possessed by the appellant, there was a requirement of 10 years of teaching experience. It is not in dispute that the appellant had only 9 years 3 months of teaching experience on the last date of making applications. Mainly the writ petitions were filed in the High Court alleging that his period of foreign study leave is to be computed for the purpose of computing the teaching experience of 10 years. It was the case before the High Court that as he was granted leave as per the leave rules and he was also granted increments for the said period, as such, such period has to be computed. It is to be noticed at this stage that he was granted scholarship for higher studies in Czechoslovakia. It is not in dispute that from 15-4-1992 to 8-3-1996 he was studying in Czechoslovakia and same cannot be considered as a teaching experience. Further, having regard to the requirements in the Regulations teaching experience of 10 years is rightly considered as a necessary qualification by the Division Bench of the High Court."

23 We, therefore, find no infirmity in rejection of the applicant's claim for promotion as Associate Professor by the DPC dated 02.02.2023. The applicant did not have the requisite qualification of teaching experience as contemplated under the 2015 Regulations read with the 2019 Regulations. Thus, there is no occasion for this Court to interfere with the reasoned and speaking order dated 14.07.2023 passed by the Director General. The order of the Tribunal, in view of

the discussion and consideration above is unsustainable. The Tribunal's order dated 21.07.2025 passed in O.A. No. 1639 of 2023 is hereby set aside.

24 The writ petition is allowed. The O.A. stands dismissed.

25 Parties will be at liberty to get urgent certified copy of this judgment and order upon fulfillment of all necessary formalities and payment of requisite court fees.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)