

Estt. Branch-II

Sub: Application of Shri Ravinder Kushwaha seeking information under the RTI Act, 2005-Regarding.

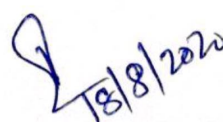
R. T. I. Cell, Hqrs. may please refer to RTI portal registration No. ESICO/R/E/20/01486 dated 01/07/2020 on the above cited subject.

In this connection, it is informed that the information thereof sought by Shri Ravinder Kushwaha under R.T. I. Act-2005 is as under:

Point No.	Information sought under RTI Act-2005	Reply
1	Please provide a copy of letter dated 02/08/2019, which was written by Sh. S. K. Singh (under secretary, social security division) ministry of labour, Govt. of India to Director General of ESIC on the subject of cancellation of registration of a Union under Trade Union Act.	Copy of letter dated 02/08/2019 received from MOLE has been enclosed.
2.	On above mention letter, under secretary endorsed a letter of CLC (C) please provide the same copy.	Copy of letter of CLC has been enclosed.

It is requested to inform the applicant accordingly.

Encl: as above


(Rajesh Prasad Gupta)
Assistant Director

RTI, Branch,, Hqrs. Office
UO Note No. A-12/22/1/GK/2017-Estt-II/269

Date: - 18/08/2020

44(R)

21
9/8/19

No. U-16016/01/2016-SS-I (Pt.)

Government of India/भारत सरकार

Ministry of Labour & Employment/ श्रम और रोजगार मंत्रालय

Social Security Division/सामाजिक सुरक्षा प्रभाग

Shram Shakti Bhawan, Rafi Marg,
New Delhi, the dated 24th July, 2019
02.08.

To,

✓ The Director General,
ESI Corporation,
Panchdeep Bhawan,
Hqrs. Office, CIG Marg,
New Delhi - 110002

Sub: Cancellation of Registration under Trade Unions - reg.

Sir,

Please refer to your letter no. B -12/16/2/AIE(M)EF/2014-E-II dated 13.09.2018 and subsequent reminder dated 05.12.2018 on the subject mentioned above. The issue has been examined in consultation with the office of CLC(C).

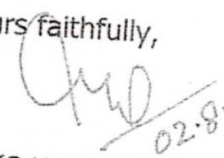
2. I am directed to convey the following in this regard:

- AC (P2A)
DIR (E-II)
Pr. Qw
B
7/8/19
Jrgr
21/8/19
- Clause 3 of the Central Civil Services (Recognition of Service Association) Rules, 1993 provides that these Rules shall apply to Service Associations of all Government Servants including civilian Government servants in the Defence Services but shall not apply to industrial employees of the Ministry of Railways and workers employed in Defence installations of Ministry of Defence for whom separate Rules of Recognition exist. Therefore, the Central Civil Services (RSA) Rules, 1993, are applicable only in respect of government servants (Government Servant, as defined under clause 2(b) of the CSS (Conduct) Rules, 1964, means any person appointed by Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a Defence Service);
 - The employees of ESIC are governed by the regulations made by ESIC and the CCS (Conduct) Rules, 1964 do not *ipso facto* apply to the employees of ESIC;
 - The employees of ESIC do not come within the definition of government servants and the Central Service (Recognition of Service Association) Rules, 1993 are not applicable to ESIC; and

- iv. The workmen of ESIC are statutorily entitled to form trade unions as per Section 2(h) of the Trade Union Act, 1926. Therefore, imposing of condition that in order to get recognition from ESIC, a union has to get their registration under Trade Union Act, 1926 cancelled is against the provision of the Trade Union Act, 1926.
3. A copy of the advice received from the O/o CLC(C) is also enclosed. ESIC is requested to re-examine the issue and take further necessary action with ~~under~~ ^{an} intimation to this Ministry.

Encl: As above

Yours faithfully,


(S.K. Singh)

Under Secretary to the Govt. of India
Tel: 011- 23766903

-S/N-

F.No. 32(13)/2019.vfn
MoLE F.No. U-16016/01/2016-SS-I(Pt)
Government. of India
Ministry of Labour and Employment
Office of the Chief Labour Commissioner(C),

New Delhi, Dated: 18.07.2019

NOTE

Subject: Cancellation of the registration under Trade Union Act-reg.

Please refer to your file no U-16016/01/2016-SS-I(Pt) for seeking comments/opinion of the CLC(C) on the issue of the condition imposed on union/service association/federation to get their registration under Trade Union Act cancelled for getting recognition from ESIC.

As per the ESI Act, 1948: ESIC is a body corporate by the name of 'Employees' State Insurance Corporation' having perpetual succession and a common seal and shall by the said name sue and be sued. S. 16 of the ESI Act provides that the Central Government in consultation with Corporation appoints its Principal officers i.e Director-General and a Financial Commissioner. Further, as per S. 17 of the Act the Staff in the ESI is employed by the Corporation and as per S 17 cl (2) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be *specified in the regulations made by the Corporation* in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay :Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

The Rule 2(f) of the *'Rules And Conditions For Recognition of Service Associations of the Employees of The Employees State Insurance Corporation'* as it stood before removal provided that the application of union or federation for recognition shall be considered only if it is registered under Trade Union Act, 1926.

ESIC has in their letter dated 13.09.2018 narrated that in the 210th Meeting of the Standing Committee in light of the CCS (RSA) Rules, 1993 approved the following:

- a. Removal of Rule 2 (f) of the *'Rules And Conditions For Recognition of Service Associations of the Employees of The Employees State Insurance Corporation'*.
- b. Unions/Federations which are already recognised by the Standing Committee will be directed to get their registration under the Trade Union Act cancelled and confirmation of the same be submitted to the corporation by 30.04.2018 failing which their recognition will be treated as cancelled.

In this regard, ESIC has also issued circulars dated 08.03.2018 and 30.05.2018 implementing the aforesaid and directing the Unions/Federations already recognized by the Standing Committee to get their registration under the Trade Union Act cancelled and submit confirmation of the same failing which their recognition will be treated as cancelled.

The clause 3 of the Central Civil Services (Recognition of Service Associations) Rules, 1993 provides w.r.t applicability of these rules that:

- E/N -

These rules shall apply to Service Associations of all Government servants including civilian Government servants in the Defence Services but shall not apply to industrial employees of the Ministry of Railways and workers employed in Defence Installations of Ministry of Defence for whom separate Rules of Recognition exist.

Hence, it is evident that Central Civil Services (RSA) Rules, 1993 are applicable only in respect of Governments servants. There is no condition for recognition of service association that association should not be registered under the provisions of Trade Union Act 1926.

The term "Government servant" has been defined in the clause 2(b) of the CCS (Conduct) Rules, 1964 as follows:

"Government servant" means any person appointed by Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a Defence Service

It is evident from the above that:

- a. The employees of ESIC are governed by the regulations made by the ESIC and the CCS (Conduct) Rules, 1964 do not ipso facto apply to the employees of ESIC.
- b. The employees of ESIC do not come within the definition of government servant and the Central Civil Services (Recognition of Service Associations) Rules, 1993 are not applicable to ESIC

Further, the primary objective of the ESIC is to provide insurance, health care facilities and running of hospitals for its subscribers as per the scheme of the ESI Act. These functions do not come within the definition of sovereign functions and ESIC as such undoubtedly comes within the definition of 'Industry' under the Industrial Disputes Act, 1947. The Section 2 (a) of the Industrial Disputes Act, 1947 which defines the term *appropriate government* expressly designates the central government as the appropriate government in relation to an industrial dispute concerning Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948)

The Code of Discipline governing the recognition of unions in an industry also requires the unions to be registered under Trade Union Act for grant of recognition. Further, Right to form associations or unions is a fundamental right guaranteed under Article 19(1)(c) of the constitution.

In light of the above, the workman of the ESIC are statutorily entitled to form Trade Unions as per S. 2(h) of the Trade Union Act, 1926.

Thus imposing a condition that in order to get recognition from ESIC a union has to get their registration under the Trade Union Act, 1926 cancelled is against the provisions of the Trade Union Act, 1926.

This issues with the approval of C2C(G).


(Dr. R.G. Meena) 18/7/19.

Dy. Chief Labour Commissioner (C)

Joint Director (SS-I & AV)

KLL (ND)

The draft to be sent to Ministry Separately