

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 2906/2010**

% **Date of Decision: 30.04.2010**

Municipal Corporation of Delhi Petitioner
Through Mr. Gaurang Kanth and Ms. B. Rajesh,
Advocates

Versus

Dr. Bhagwan Das Respondent
Through Mr. Rajinder Nischal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | NO |

ANIL KUMAR, J.

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The MCD/petitioner has impugned the order dated 8th October, 2009 passed by the Central Administrative Tribunal, Principal Bench in TA No. 275/2009 titled as Dr. Bhagwan Dass Vs. Municipal Corporation of Delhi allowing the Original Application of the respondent and setting aside the order dated 11th January, 2007 holding that the respondent shall superannuate on 31.07.2007 passed by the petitioners, and holding that the respondent would have continued till the age of 62 years and therefore, he would have retired on 31.07.2009

and he would be entitled to all the consequential benefits including back wages.

The respondent was a GDMO in MCD who attained the age of retirement on 31st July, 2007, however, he sought benefit of Corrigendum dated 30th April, 2007 whereby his age of superannuation as Doctor in Public Health Sub Cadre of MCD/petitioner had to be enhanced from 60 to 62 years which was denied to him.

This is not disputed that the respondent was a GDMO and he had done diploma in public health in 1990. He was transferred in 1993 from GDMO to DHO City Zone, where he continued till he superannuated. It is also not disputed that two disciplinary proceedings were pending against the respondent and the punishments were inflicted which had been continuing till the Corrigendum modifying the age of superannuation was issued.

The allegation of the petitioner is that Screening Committee had considered the claim of increase of age of superannuation from 60 to 62 years and had rejected the claim of the respondent for the applicability of the Corrigendum increasing the age of superannuation from 60 to 62 as the respondent was not found to be fit.

The decision of the petitioner not to give benefit of Corrigendum dated 30th April, 2007 to the respondent was challenged by him before the Central Administrative Tribunal by filing a petition under Section 19 of the Administrative Tribunals Act, 1985. The Corrigendum dated 30th April, 2007 issued by the petitioner is as under:-

MUNICIPAL CORPORATION OF DELHI
(Central Establishment Deptt.)
Town Hall Delhi-6

No.Supt.(M)/CED(M)/2007/RK/15
Dated: 30.04.2007

CORRIGENDUM

In Partial modification of this office Order No.Supt.(M)/CED(M)/2007/ RK/15 dated: 18.12.2006 regarding enhancement of age retirement of Specialist Doctor of Central Health Service from 60 to 62 years and in terms of decision of Delhi Municipal Corporation of Service Regulations, 1959. **The age of superannuation of Doctors in the Public Health Sub Cadre of MCD is also enhanced from 60 years to 62 years w.e.f. 16.11.2006 i.e. the date of issue of order of Govt. of India.**

This issue with the approval of the Competent Authority.

Sd/-

(Renu Krishanan Jagdev)
Director (Personnel)

The plea of the respondent that he was in public health cadre and therefore, the benefit of Office Order dated 30th April, 2007 could not be denied to him, was propounded on the plea that he had not been rejected in public health cadre and the Screening Committee could not

have rejected the claim of the respondent. It was also contended that only requirement was to be a doctor in public health sub cadre of MCD.

The Tribunal had rejected the plea of the petitioner on the ground that the Recruitment Rules for General Duty Officer Grade-I, Public Health in para-11 categorically contemplates that the officers appointed on transfer had to exercise option to be inducted in public health cadre within one year failing which the officer concerned shall be deemed to have opted for the public health cadre automatically. It was noticed by the Tribunal that once the respondent by a conscious decision of the MCD had been inducted on transfer in public health cadre and the respondent had not exercised his option after one year, he had been automatically inducted in the health sub cadre, where he worked till the time of his superannuation, therefore, the plea that the respondent was not inducted in public health cadre could not be accepted.

Regarding the applicability of Corrigendum in case of the respondent, the Tribunal after perusing the recruitment rules and the Corrigendum, held that there was not any requirement for formation of a Screening Committee and applicability of the Corrigendum only subject to recommendation of the Screening Committee. Considering the penalty imposed on the respondent, it was also held that there was no reasonable nexus between the penalty imposed and the applicability

of the Corrigendum enhancing the age of retirement from 60 to 62 years w.e.f. 16th November, 2006 for the Doctors working in the public health sub cadre of Municipal Corporation of Delhi.

Learned counsel for the petitioner has impugned the order of the Tribunal primarily on the ground that if the Corrigendum and the recruitment rules are considered, the enhancement of the age of superannuation of Doctors in the public health sub cadre was subject to the recommendation of the Screening Committee. The recruitment regulation for the post of General Duty Officer Grade-I (Public Health) is as under:-

“11. In case of rectt. By promotion/ deputation/transfer grades from which promotions/deputation/ transfer to be made

Transfer: (i) General duty Officer Gr.-I (General Duty)

(ii) Failing (i) above General Duty Officers Grade-II with 5 years regular service in the grade: and

b) possessing the requisite post graduate have acquired two years back in case of degree holders and 4 years back in the case of Diploma Holders.

Note:-The Officers appointed on transfer shall have to exercise option within one year from the date of appointment whether he/she wants to serve in the public health Cadre or to go back to the General Duty Cadre. In

case no option is filed within the stipulated period, the Officers concerned shall be deemed to have opted for the Public Health Cadre automatically. ”

The petitioner cannot dispute that the respondent was inducted on transfer in public health cadre and he had also not exercised his option after one year and consequently, automatically he was inducted in health cadre. Therefore, the plea of the learned counsel for the petitioner that the respondent was not inducted in the public health cadre cannot be accepted. If the respondent was in public health cadre, why the Corrigendum dated 30th April, 2007 will not be applicable to him has not been satisfactorily explained by the learned counsel for the petitioner. The said Corrigendum without carving out any exception, stipulates that the age of superannuation of Doctors in public health cadre of MCD is enhanced from 60 years to 62 years w.e.f. 16th November, 2006.

The respondent attained the age of superannuation after 16th November, 2006, therefore the respondent was entitled to have his age of superannuation enhanced to 62 years. On the basis of recruitment rules, it cannot be inferred that this enhancement of age of superannuation from 60 to 62 years was subject to the recommendation of any Screening Committee. Consequently, the plea of

the petitioner that the name of the respondent was not recommended by the Screening Committee for the applicability of Corrigendum dated 30th April, 2007 cannot be accepted. In the circumstances, the finding of the Tribunal cannot be faulted by the petitioner.

Considering the facts and circumstances, the petitioner has failed to make out any illegality, irregularity or such perversity in the order of the Tribunal which shall entail any interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition, in the facts and circumstances is, therefore without any merit and is liable to be dismissed. The writ petition is therefore dismissed. The parties are however left to bear their own costs.

ANIL KUMAR, J.

April 30, 2010
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MOOL CHAND GARG, J.