

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO. 549/2011

Date of Decision: 8th February, 2011

GAJENDRA PRASAD SINHA Petitioner

Through: Mr. Sagar Saxena, Adv.

versus

UOI AND ORS Respondent

Through: Mr. Sachin Datta, Adv. with
Mr. Abhimanyu Kumar, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J.(Oral)

1. The present writ petition is filed by the petitioner seeking directions to the respondent to enhance the age of superannuation of General Duty Medical Officers (GDMO) belonging to Central Health Services (CHS) bringing it at par with the other sub-cadres.

2. The brief facts of the case are that in CHS, apart from the GDMO, there are three other sub-cadres, i.e. (i) Teaching Specialists, (ii) Non-teaching Specialists and (iii) Public Health Specialists. Initially the age of superannuation for all the cadres was 60 years. The petitioner was appointed as GDMO on 12th November, 1986 and thereafter, his service was regularized on 22nd October, 1991. He was

promoted as Senior Medical Officer on 22nd October 1995; as Chief Medical Officer on 27th October 2001, and as Chief Medical Officer (Non-functioning Selection Grade) on 22nd October, 2004.

3. The Government of India felt very concerned with the high attrition rate of government doctors through voluntary retirement, resignation and foreign assignment. In order to diagnose the cause, and to suggest a remedy, a committee called the 'J.A.Chaudhary Committee' was constituted. After an in-depth analysis of the situation, the committee submitted its report in May 2006. It recommended that the age of superannuation be increased from 60 to 62 years. The respondent adopted that recommendation and increased the age of superannuation for Public Health Specialists and Non-teaching Specialist sub-cadres to 62 years, and for Teaching Specialists sub-cadre to 65 years. However, for the GDMO sub-cadre, the retirement age was kept at 60 only.

4. Certain officers who were aggrieved by the aforesaid act of the respondent approached the Central Administrative Tribunal for relief. After their petitions were rejected by the Central Administrative Tribunal, they approached this Court in **Dr. Asha Aggarwal & Ors. v. Union of India**, WP (C) Nos. 460, 557, 643 and 2115 of 2007. These petitions were disposed of by a Division Bench on 11th January 2008, leaving the question of enhancement of the age of GDMOs to be decided by the 6th Central Pay Commission. Paragraph 20 of that judgement reads as under:

"20..... Though we find prima facie that it was not justified to exclude GDMOs and action of the Government suffers from vice of hostile discrimination and is, therefore, violative of

Articles 14 and 16 of the Constitution, we do not express our final opinion on this aspect and would leave the matter to the Sixth CPC to decide about the justification for the enhancement of the age of GDMOs. "

5. Earlier, before the matter was referred to the 6th Central Pay Commission (for short, 'CPC') in an Office Memorandum dated 1st August, 2007 the Government of India also recommended increase or enhancement of the age of superannuation of the GDMOs from 60 to 62 years for consideration by the 6th CPC. This O.M. was also noted by the Division Bench of this Court in paragraph 12 of the aforesaid judgement. The Office Memorandum reads as under:

"Subject: Proposal for enhancement of age of superannuation of General Duty Medical Officers of Central Health Service, from 60 to 62 years-reg. The undersigned is directed to forward herewith a proposal for enhancement of age of superannuation of General Duty Medical Officers of Central Health Service from 60 to 62 years, for consideration of 6th CPC."

6. Ultimately, the report of the 6th CPC was received. The recommendation of that Pay Commission with regard to increase in the age of superannuation for all the GDMOs in paragraph 6.2.4 in Chapter 6.2 thereof, dealing with the "Age of superannuation and voluntary retirement" reads as under:

"6.2.4. . . . The Commission recommends that the current age of superannuation should be maintained. Further, except in the case of Scientists and Medical Specialists, no extensions should be filled by incumbents who have sufficient period of service left before the stipulated age of retirement. Medical Specialists and Scientists may, however, be allowed extension of service of upto 2 years on a case to case basis."

A reading of the said paragraph, as a whole, shows that the enhancement of age of superannuation was not recommended by the 6th CPC because of the need, inter alia, for, "maintaining a youthful profile of the bureaucracy that will be more dynamic, result oriented and better attuned to the needs of their constituents."

7. Counsel for the respondent refers to a decision of this Court in W.P. (C) No. 1005/2008 decided on 17th July, 2008 titled **All India GDMO Association through its President & Ors. vs. Union of India through the Secretary, Ministry of Health and Family Welfare**, where a similar question arose out of a decision that had been rendered by the Central Administrative Tribunal. Before the Tribunal also, the same question, i.e. whether the age of superannuation of the GDMOs should be increased from 60 to 62 years to place them at par with the Non-Teaching Specialist sub-cadre, Teaching Specialist sub-cadre and Public Health sub-cadre was raised. In that matter, the petitioners had relied on the aforesaid decision of **Dr. Asha Aggarwal & Ors. vs. Union of India and Anr.**, (supra) which has now been relied upon in this matter also. In deciding the aforesaid case of **All India GDMO Association through its President & Ors.** (supra), the Division Bench has also referred to the aforesaid paragraph 6.2.4 of the 6th CPC Report, which has been reproduced above, and concluded that no fault can be found in the decision of the Tribunal. In other words, quite clearly, this Court found no basis, either in fact or in law, for interfering with the recommendations of the 6th CPC or for issuing any mandate to the government in this regard.

8. Counsel for the petitioner, however, seeks to distinguish the aforesaid decision of the Division Bench in **All India GDMO Association through its President & Ors.** (supra) and submits that this judgement does not deal with the vires of the finding of the 6th CPC. I do not agree. In paragraph 4, of the said decision states as follows:

“In view of the report of the 6th CPC, we cannot find any fault in the decision taken by the Tribunal.”

This clearly shows that the Court was satisfied with the fact that a duly constituted expert body had examined the matter, and therefore, the Tribunal’s reliance on the same was unimpeachable. In other words, the conclusion of the 6th CPC, as also the reasons given by that Commission, for reaching its conclusion had certainly been examined by the Court. I do not find any reason to hold otherwise.

9. It is well settled that Courts do not constitute expert bodies and the recommendations made by expert bodies like the 6th CPC, as in this case, cannot be overturned unless the recommendations made by such an expert body are completely absurd. To my mind, the aspect of increase in age of superannuation of GDMOs has been properly examined by the 6th CPC and its recommendation cannot be termed as ultra vires and should not be struck down. Counsel for the petitioner is also not in a position to place any authority in support of the proposition that the Court should interfere and strike down the recommendation of a duly constituted Pay Commission, and thereafter, also issue a mandate to the Government of India to increase the retirement age.

10. In this context, in **State of U.P. & Ors. v. U.P. Sales Tax Officers Grade II Association** (2003) 6 SCC 250, the Supreme Court has held as follows:-

“11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees.”

Similarly, in this case also, the decision of the 6th CPC regarding the age of superannuation has also been taken after examining the various aspects of the post of GDMO including the nature of duties to be performed in that post, and I see no reason to interfere.

11. This writ petition is dismissed.

SUDERSHAN KUMAR MISRA, J.

FEBRUARY 08, 2011
rd