

Court No. - 20

Case :- WRIT - A No. - 8060 of 2023

Petitioner :- Dr. Ram Vishal Tiwari And 5 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Ayush, Govt. U.P.
Lucknow And Another

Counsel for Petitioner :- Om Prakash Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioners and learned State Counsel for opposite parties.
2. Petition has been filed seeking a direction to opposite parties for enhancement of age of superannuation of petitioners from 60 to 62 years thereby giving them parity with allopathic medical officers in the matter of age of superannuation. Further prayer for a direction to opposite parties to permit petitioners to continue on their respective post with all service benefits till the age of 62 years as has been awarded to the allopathic medical officer vide notification dated 21st May, 2017 has also been sought.
3. Learned counsel for petitioners submits that the aforesaid aspect has already been considered by Hon'ble Supreme court in the case of North Delhi Municipal Corporation versus Dr. Ram Naresh Sharma and others reported in 2021 SCC Online SC 540 which has been followed by Coordinate Bench of this court in the case of Dr. Surendra Pratap Yadav versus State of U.P. and others, writ A No. 30915 of 2021. It is submitted that aforesaid judgment is squarely applicable in the present facts and circumstances of the case.
4. Learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by learned counsel for petitioner with preliminary objection that the prayer as made in the petition makes it evident that the petition is not maintainable since it is seeking a direction to the State Government to legislate. It is also submitted that the judgment in the case of Dr. Surendra Pratap Yadav has subsequently been challenged in special appeal (defective) No. 320 of 2023 and has been entertained although no interim directions have been passed till date. Learned counsel has also placed reliance on judgment rendered by Supreme Court in the case of Central Council for Research in Ayurvedic Sciences and another versus Bikartan Das and others, A.I.R. 2023 Supreme Court 4011 and State of Gujrat and other others versus Dr. P.A. Bhatt and others, A.I.R.

2023 Supreme Court 2164 to submit that enhancement of age of superannuation is permissible only as legislative or a subordinate Legislative Act and such a direction can not be issued in the manner the prayer has been made. It is submitted that the judgment rendered in Dr. Ram Naresh Sharma (supra) has thereafter been considered in the aforesaid two judgments.

5. Upon consideration of submissions advanced by learned counsel for parties, it is quite evident that in the case of Dr. Surendra Pratap Yadav (supra), petition had been filed challenging order dated 17th December, 2021 whereby petitioner therein was retired at the age of 60 years. A co-ordinate bench of this court in the aforesaid judgment has placed reliance on the judgment rendered by Supreme Court in the case of Dr. Ram Naresh Sharma (supra) and has held as follows:-

*" In case of **Dr. Ram Naresh Sharma (supra)**, Union of India enhanced the age of retirement of Allopathic doctors working at Delhi from 60 years to 65 years. The said benefit, however, was not extended to Ayush doctors, hence, a claim petition was filed before the Central Administrative Tribunal which was allowed vide order dated 24.08.2017 holding that the Ayush doctors are also entitled to retire at the age of 65 years as the Allopathic doctors. Against the said order, a writ petition was filed before the High Court which was also dismissed by order dated 15.01.2018, affirming the order of the Tribunal. The matter reached the Supreme Court. During pendency of the writ petition, the Central Government issued notification extending the benefit of retirement age of 65 years to the Ayush doctors also, along with Allopathic doctors.*

Be the facts as they may, the Supreme Court considered the classification created by the Central Government between the Ayush and doctors of CHS practicing Allopathy and held that the same is discriminatory and unreasonable, since doctors under both the segment are performing the same function of treating and healing their patients. Merely because they are using different mode of treatment, it would not qualify as an intelligible differentia. Thus, the classification to be unreasonable and discriminatory and inconsistent with Article 14 of the Constitution of India. The same are the circumstances of the present case. Doctors practicing Allopathy working under the Provincial Medical and Health Services are given the benefit of retirement at the age of 62 years while petitioner who belongs of Homeopathic Medical Service Cadre and treats his patients through homeopathy is not given the benefit of retirement age of 62 years. The same again is a classification hit by Article 14 of the Constitution of India as held by Supreme Court in case of Dr. Ram Naresh Sharma (supra).

In view thereof, the impugned order dated 17.12.2021 is hereby set aside.

Petitioner is permitted to continue in service till the age of 62 years and he shall be provided all consequential benefits of service in accordance with law.

With the aforesaid, the writ petition stands allowed."

6. A perusal of aforesaid judgment makes it evident that it has completely followed the judgment rendered in the case of Dr. Ram Naresh Sharma (supra) without any other independent finding. It is not disputed that except for the fact that petitioner in the case of Dr. Surendra Pratap Yadav (supra) challenged the order of superannuation, other aspects pertaining to present petitioner are quite similar. Learned counsel for petitioner has also sought benefit of the aforesaid judgment on that very aspect.

7. With regard to aforesaid facts, learned State Counsel has sought to distinguish the aforesaid judgment on the point that the judgment rendered by Supreme Court in the case of Bikartan Das (supra) and P.A. Bhatt (supra) are subsequent to the judgments rendered in the case of Dr. Ram Naresh Sharma (supra) and Dr. Surendra Pratap Yadav (supra) and therefore could not be considered.

8. With regard to such distinguishing feature, it would be useful to advert to the aforesaid two judgments which have been relied upon by learned State Counsel.

9. In the case of Bikartan Das (supra), Hon'ble Supreme Court has adverted to the decision rendered in the case of Dr. Ram Naresh Sharma (supra) in the following manner:-

" 46. The aforesaid decision of this Court in the case of Dr. Ram Naresh Sharma (supra) upon which strong reliance has been placed on behalf of the respondent No. 1 is of no avail for the simple reason that in the said case, the only question that arose was whether the benefit of enhancement of age of retirement from 60 years to 65 years granted in favour of allopathy doctors was available even for ayurveda doctors or not? The said decision was based upon an order of the Ministry of AYUSH dated 24.11.2017.

47. As seen from paragraph 23 of the said decision referred to above, the age of retirement of allopathy doctors was enhanced by an order dated 31.05.2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since, Ayurveda doctors were not covered by the Ministry's order dated 31.05.2016, the Ayurveda doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24.08.2017. The North Delhi Municipal Corporation (Employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an order dated 24.11.2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but w.e.f. 27.09.2017. It is in that context that this Court held as aforesaid in Dr. Ram Naresh Sharma (supra). Thus, this decision is in no manner helpful to the respondent No. 1. "

10. Similarly in the case of Dr.P.A.Bhatt (supra), the said

judgment in the case of Dr. Ram Naresh Sharma (supra) has been considered in the following manner:-

"18. A cursory reading of the portion of the judgment extracted supra, may give an impression as though the question arising for consideration is no longer res integra and that Allopathy doctors and Ayurved doctors should be treated on par insofar as all service conditions are concerned. But a careful reading of the entire judgment shows that the said decision was based upon an order of the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) dated 24.11.2017. As seen from paragraph 2 of the said decision, the age of retirement of Allopathy doctors was increased by an order dated 31.05.2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since Ayurved doctors were not covered by the Ministry's order dated 31.05.2016, Ayurved doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24.08.2017. The North Delhi Municipal Corporation (employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an order dated 24.11.2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but with effect from 27.09.2017. It is in that context that this Court held as aforesaid in Dr. Ram Naresh Sharma. This Court did not go into the question whether AYUSH doctors and Allopathy doctors were performing equal duties and responsibilities so as to be entitled to equal pay.

19. We must remember the fundamental distinction between, (i) the issue of law that equal work entails equal pay; and (ii) the issue of fact as to whether two categories of employees are performing equal work or not? This Court did not go into the factual aspect in Dr. Ram Naresh Sharma as to whether AYUSH doctors were performing equal work as Allopathy doctors. This Court simply relied upon the order of the Ministry of AYUSH itself enhancing the age of retirement of AYUSH doctors on par with Allopathy doctors.

20. In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay. Therefore, we do not think that the issue raised in these appeals can be said to be covered by the decision in Dr. Ram Naresh Sharma (AIR 2021 SC 3795). "

11. Upon perusal of aforesaid judgments and particularly the relevant portions thereof, it is evident that the judgment of Dr. Ram Naresh Sharma (supra) has neither been distinguished nor overruled. On the contrary in the aforesaid judgments, Hon'ble Supreme Court did not find any similarity with the aforesaid judgment. In the case of Bikartan Das (supra), the judgment of Dr. Ram Naresh Sharma (supra) was not relied upon on the aspect that the said judgment was based on the order of Ministry of Ayush dated 24th November, 2017 which was not the issue in the case of Bikartan Das (supra).

12. Similarly in the case of Dr. P.A. Baht the judgment rendered

in the case of Dr. Ram Naresh Sharma (supra) was held to be inapplicable since it pertained to enhancement age of retirement of ayush doctors in the light of such orders issued with regard to allopathic doctors whereas the case of Dr. P.A. Bahtt (supra) pertained to parity of service conditions relating to pay and allowances and revision of pay.

13. In view of aforesaid facts, it is quite evident that the aforesaid judgments relied upon by learned State Counsel are inapplicable in the present facts and circumstances of the case and in fact the judgment rendered in the case of Dr. Ram Naresh Sharma (supra) still holds the field.

14. So far as judgment rendered in the case of Dr. Surendra Pratap Yadav (supra) is concerned, it is under challenge in the special appeal indicated herein above but it appears that no interim orders have been passed therein.

15. So far the question of petitioners seeking a prayer for legislating is concerned, it is discernible that the said prayer has been made in the light of judgment already rendered by this court and as such the direction to legislate would not come into play since there is already such a direction issued by this Court.

16. In the aforesaid circumstances, it would be expedient in the interest of justice that judgments rendered by Co-ordinate Benches are followed and therefore this court has no hesitation in following the judgment rendered by co-ordinate bench of this court in the case of Dr. Surendra Pratap Yadav (supra).

17. Consequently the petition stands allowed in the light of judgment and order dated 27th January, 2023 rendered in the case of Dr. Surendra Pratap Yadav (supra).

Order Date :- 8.11.2023

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