Court No. - 4

Case :- WRIT - A No. - 6055 of 2024

Petitioner :- Dr. Brijendra Kumar Srivastava
Respondent :- State Of U.P. Thru. Prin. Secy., Ayush Anubhag-I, Lko. And Another
Counsel for Petitioner :- Mohammad Tauseef Siddiqui,Shiv Pratap Singh
Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard learned counsel for the petitioner and Ms. Jyotsana Pal, learned Chief Standing Counsel-IV for the State-opposite parties.

2. By means of the present petition, the petitioner has prayed following main reliefs:

"i) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to permit the Petitioner to work up to the age of 62 years on the post of Ayurvedic Medical Officer and paid his salary including arrear of salary and also provide all consequential benefit of service in accordance with law.

ii) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to extend the benefit of judgment and order dated 27.01.2023, 11.08.2023, 08.11.2023 and 23.07.2024 passed in Writ A No. 30915 of 2021 (Dr. Surendra Pratap Yadav Vs. State of U.P. and Another, Writ A No. 2097 of 2022 (Dr. Ajeet Kumar Vs. State of U.P. and Others) & Writ A No. 8060 of 2023 (Dr. Ram Vishal Tiwari and 5 others Vs. State of U.P. and others), Writ A No. 5601 of 2024 (Dr. Mohd. Salim Vs. State of U.P. and others) to the Petitioner also."

3. Attention has been drawn towards Annexure no. 3 which is a judgment and order dated 27.01.2023 passed by this Court in Writ A No. 30915 of 2021, (Dr. Surendra Pratap Yadav vs. State of U.P. and Another), which reads as under:

"Heard learned counsel for the petitioner and learned Standing Counsel for the State.

Present writ petition is filed by the petitioner challenging the order dated 17.12.2021 passed by respondent no.2 Director, Department of Homeopathy, U.P. 8th Floor, Indira Bhawan, Lucknow. By the said order petitioner is retied w.e.f. 31.12.2021 at the age of 60 years.

The facts of the case are that petitioner is a homeopathic doctor working with the State Government. By notification dated 31.05.2017, the age of

the medical officers of the Provincial Medical and Health Service in the State of U.P. was enhanced from 60 years to 62 years. The doctors working under the Provincial Medical and Health Service are doctors of Allopathy. The services of doctors of homeopathy belong to Homeopathic Medical Service Cadre and the benefit of the notification dated 31.05.2017 is not extended to them.

Learned counsel for the petitioner relies upon the judgment of the Supreme Court passed in 'North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma and others' reported in 2021 SCC Online SC 540. Paragraph-23 and 24 of the said judgment reads:-

"23. The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.

24. The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016-E-I (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion."

On the other hand, learned Standing Counsel submits that the benefit of the aforesaid judgment could not be granted to the petitioner inasmuch as in the said case the Union of India had issued a separate order giving benefit of enhancement in age of retirement to the Ayush doctors along with Allopathic doctors.

I have heard learned counsels for the parties and also perused the records and the judgment placed before this Court with their assistance.

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 15.011.2018, 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 parents. 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."

4. Learned counsel for the petitioner has submitted that the State filed special appeals in all identical matters and leading special appeal bearing Special Appeal No. 446 of 2023 wherein this Court has passed the order dated 11.07.2024 annexed as Annexure no. 7 which reads as under:

"Heard.

Most of the respondents have attained the age of 62 years but some have not. In fact in three cases, it is informed that, the judgment of the writ Court has been complied, obviously without prejudice to rights of the State in pending appeals. We pointedly asked the learned State counsel as to whether it is true that in case of three persons compliance of similar orders has been made, he did not dispute the said assertion of learned counsel for the respondents.

In these circumstances, as these appeals would take some time to be heard and decided considering the rush of work, we provide that whosoever has not yet attained the age of 62 years and is in service, in their context also compliance shall be made on the same terms on which the compliance has been made in the case of three persons namely Dr Rakesh Kumar Bajpayee, Dr Ajit Kumar and Dr Ram Vishal Tiwari, without prejudice to the rights of the State in these appeals and also subject to the condition that all these officers will submit an undertaking before the authority concerned as also an affidavit in these appeals, where they are a party, to the effect that in the event the State succeeds they will refund the amount

paid to them in compliance of the judgment of the writ Court, which is sub judice herein. In the event such affidavit is not filed before this Court and undertaking is not furnished before the concerned State authority then the benefit of this order shall not be available to such respondents.

The matter shall now come up for hearing on 24.07.2024.

The parties shall prepare a list of relevant dates and events, skeletal points on which they wish to address the Court as also authorities on which they seek to rely in support of their contentions and exchange the same between them and provide the same to the Court as well."

5. Learned Chief Standing Counsel has stated that the aforesaid special appeal is listed for final disposal, therefore, the matter may be adjourned for sometime so that the final judgment in the special appeal may come. Be that as it may, as the appellate court has granted limited protection to the extent that the Doctors who have not attained the age of 62 years and are in service shall file their undertaking before the department to the effect that in the event the State succeeds, they will refund the amount paid to them in compliance of the judgment of the appellate court which is sub judice there.

6. The appellate court further clarified that in the event such affidavit is not filed before this Court or an undertaking is not furnished before the concerned State authority, then the benefit of the order shall not be available to those Doctors. Notably, learned counsel for the petitioner has submitted that the petitioner is ready to furnish their undertaking in terms of the direction being issued by the appellate court vide order dated 11.07.2024, therefore, I do not find any reason to keep this petition pending any longer.

7. Accordingly, this writ petition is **allowed** in terms of the order dated 27.01.2023 passed by this Court in re: **Dr. Surendra Pratap Yadav** (supra) subject to undertaking being submitted by the petitioner before the concerned State authority in compliance of the order dated 11.07.2024 passed by the Division Bench of this Court in re: Special Appeal No.446 of 2023 and other connected appeals.

8. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 2.8.2024
RBS/-

Digitally signed by :-
RAM BIR SINGH
High Court of Judicature at Allahabad,
Lucknow Bench