

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10889 of 2008

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Dr Smt Chhabi Sahay, wife of Dr Radha Mohan Prasad, resident of House No K – 118, Mohalla – Hanuman Nagar, PO & PS – Hanuman Nagar, Town & District – Patna, presently posted as Incharge Insurance Medical Officer, Employee State Insurance Hospital, Patna City, Patna

.... Petitioner/s

Versus

- 1 The State of Bihar through the Chief Secretary, New Secretariat, Patna
- 2 The Commissioner –cum- Secretary, Department of Finance, Government of Bihar, New Secretariat, Patna
- 3 The Principal Secretary, Department of Labour, Employment & Training, Government of Bihar, Patna
- 4 The Commissioner –cum- Secretary, Department of Health, Medical Education & Family Welfare, Government of Bihar, New Secretariat, Patna
- 5 The Deputy Secretary, Department of Finance, Government of Bihar, Patna
- 6 The Deputy Secretary, Department of Labour Employment & Training, Government of Bihar, Patna
- 7 The Director, Medical Services, Employees State Insurance Scheme, Bihar, Panchdeep Bhawan, Bailey Road, Patna
- 8 The Accountant General (A & E), Bihar, Birchand Patel Marg, Bihar, Patna

.... Respondent/s

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 27-04-2015

Heard Shri Chitranjan Sinha, learned Senior Advocate

for the petitioner, learned counsel for the State and Accountant General and with their consent, the writ petition is being disposed of at this stage itself.

2 The petitioner, being an Allopathic Doctor, was in the Bihar Health Service as Medical Officer in the Health Department. Subsequently, with her consent, she was permanently absorbed in the Labour Department thereby her lien in the Health Services stood terminated. Thereafter, in the year 2007, State Government decided

to increase the age of superannuation in respect of doctors in the Bihar Health Service. It was so done from 60 to 62 years in 2007. Obviously, the petitioner, not being in Bihar Health Service Cadre any more, did not get the same benefit and her age of superannuation continued to be 60 as for all Government services. The writ petition was then filed in the year, 2008 and the substantive relief sought for was extension of service as given to the Doctors of Bihar Health Service Cadre to other Doctors in State Government service as well.

3 During the long pendency of this writ petition, it has now been brought on record that with effect from 01.09.2010, State Government decided that Doctors, in Labour Department, would also have extended service tenure that is they would now superannuate at the age of 62 years. Unfortunately, the petitioner retired on 31.08.2010 and, as such, could not get the benefit thereof. Shri Chitranjan Sinha, learned Senior Advocate submits that once the State Government had enhanced age of superannuation of Doctors in the Health Services in the year 2007, the benefit ought to have been given to the petitioner as well. She was originally in Bihar Health Service Cadre and had moved to the Labour Department where she was permanently absorbed as a Medical Officer. The services being same or similar, not granting her the benefit of Doctors in the Health Services, was hostile discrimination and, hence, ultra vires to Article

14 of the Constitution of India.

4 Having heard the learned Senior Counsel and considering the matter, in my view, though the submission appears to be attractive, legally it is not sustainable. Firstly, so far as the question of selecting a date for enforcement of a new provision or regulation, the choice is that of the Executive Government. Unless it is shown to be “wide of the mark” or “out of the hat” or “mala fide”, it cannot be challenged. It is the prerogative of the Executive Government. In the present case, none of the aforesaid three conditions have been urged. All that has been said is, the petitioner lost the benefit of two years of active service only by a day. That is not sufficient to interfere.

5 Next, the applicability of the modified date of superannuation to the Health Services and to Doctors in other services are concerned, they are separate classes. The cadre of Health Services and the Doctors therein are distinct and different class from Doctors in other Departments which is not part of Health Services. Therefore, they being different classes, extending similar benefits from different dates to the two different classes cannot be questioned. It is immaterial whether in both the different classes, a person is there as a Medical Doctor. The cadres are different. They perform different nature of work. There being distinct classification, different

treatments to the two distinct group is not irrational.

6 Therefore, I am unable to accept the submission as made on behalf of the petitioner. This writ petition is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

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