

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6445 of 2013

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1. Dr. Narendra Kumar Son Of Late Nageshwar Prasad Resident Of Nagina Bhavan, Mohalla - Tilha Beldari Tola, Gaya, P.S. Civil Lines, District - Gaya

2. Dr. Nehal Husnain Son Of Late Gulam Husnain Resident Of Mohalla - Patauna, P.S. Biharsharif, District - Nalanda

3. Dr. Rama Kant Thakur Son Of Late Shashi Kant Thakur Resident Of Village - Dhakjari, P.S. Arer, District - Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Chief Secretary, Government Of Bihar, Patna

3. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna

4. The Principal Secretary, Department Of Animal Husbandry And Fisheries Resources, Bihar, Patna

5. The Director, Institute Of Animal Husbandry And Production, Bihar, Patna Null

6. The Special Secretary, Department Of Animal Husbandry And Fisheries Resources, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar,
Mr. Arbind Kumar, Advocate

For the State : Mr. Sanjay Pandey, SC 21
Mr. Nishant Kumar Jha, AC to SC 21

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-04-2016

Heard learned counsel for the petitioners and learned counsel for the State.

In the present writ petition, petitioners are challenging the order dated 28.8.2012 issued by the Special Secretary, Department of Animal Husbandry and Fisheries Resources, Bihar, Patna by which grievances of the petitioners for enhancing the age of superannuation from 60 to 65 years has

been rejected.

The ground has been assigned in the impugned order that there is a difference between the doctors who are treating the animal and those who are treating human beings, the enhancement of the age of doctors treating human beings is beneficial to the public in general.

Petitioners are the Veterinary Doctors governed by their Service Rule. As per the Service Rule, the age of superannuation is 60 years; claim is age of superannuation should be enhanced to 65 years. Submission has been made by the petitioners their course of study is of same period as that of doctors MBBS, BDS and others.. Claim has been made that petitioners have also faced the examination for entry in Veterinary College. The minimum qualifications of entrance into MBBS, BDS and Animal husbandry is same. They are taught in the colleges for the treatment of animal, they study Biochemistry, Pharmacology & Toxicology, Bacteriology, Pathology, Clinical and Preventive Medicine, Obstetrics, Gynecology and additionally animal husbandry. They have gone some special courses after having spent in studying at College, the subjects which are taught to them are almost same to those who have obtained MBBS or BDS degrees. In the



whole of the pleading, endeavor has been made by the petitioners to prove that they have studied for the same period and similar manner as that of MBBS, BDS, Ayurvedic, Homoeopathic and Unani. Further submitted, it is easy to treat human beings, they are in a position to give reply query, explain their feeling of pain and pleasure but treating the animal it is very difficult as they can not express their pain nor can disclose the nature of ailment that they are facing.

In a nutshell, the pleading has been made that job of doctors of animal is more arduous than to the doctor who treats the human beings. It has further been submitted that the pay scale of the MBBS, BDS, Ayurvedic, Homoeopathic are equal to the pay scale of doctors of animal husbandry and on that strength claiming that the Government of Bihar vide notification no. 11637 dated 22.12.2011 has enhanced the age of superannuation of MBBS, Ayurvedic doctors, Homoeopathic doctors and Unani doctors from 60 to 65 years as they are also doctors they belonged to the same class of doctors they should be given same treatment. There cannot be a difference of age of superannuation in doctors on the ground that they are treating human beings and petitioners are treating animal. There is no rational behind it to leave them to superannuate at the age of 60

years and a doctor treating human beings will be 65 years. When pay scale of the doctors, either they are treating human beings or animal is equal, on that strength petitioners claimed that the age of superannuation of doctors of the animal should be enhanced at par with the doctors treating human beings.

Learned counsel for the petitioners has submitted that earlier petitioners have moved before this Court vide C.W.J.C. No.1556 of 2012 with a prayer to enhance the age of superannuation. This Court vide order dated 30.1.2012 has recorded that the issue of age of enhancement of superannuation is pending before the Finance Department and refused to adjudicate the dispute. Petitioners for redressal of their grievance filed representation before the Chief Secretary, Government of Bihar, Principal Secretary, Finance Department and Principal Secretary, Animal Husbandry Department and on consideration of the same the impugned order has been passed and rejected the claim of the petitioners.

Learned counsel for the petitioners has tried to impress upon this Court that the period of study is by and large the same as that of MBBS but better than those who are BDS Ayurvedic and Unani. It has further been submitted that the animal cannot respond and they cannot disclose sufferings of pain, they can



not explain feeling, diagnosis get complicated to understand the nature of pain and disease from which the animals are suffering, they have to apply more effort for treatment of animal, treatment of human beings and animal are effected by identical disease. It is very easy to treat the human beings but it is not the same that of animal. It is impressed upon this Court that their job is more arduous in nature pay scale of animal husbandry doctor is the same as that of MBBS. So naturally they should be given same treatment.

Learned counsel for the State submits that the doctors who are treating the animal are in different class than those who are treating human beings, they cannot compare themselves with the doctors who are treating the human beings. Government has rightly recorded that those who are treating human beings is different as that of animal husbandry. Merely because their jobs are arduous in nature cannot be basis of enhancement of age of superannuation. The doctors who are treating human beings, enhancement of age of superannuation will be beneficial to the public at large which cannot be made applicable the doctor treating of animal. It has further been submitted that fixation of age of superannuation and salary is an executive function and that lies within the domain of the State

and this Court should not interfere normally while exercising judicial review unless it is shown that the act of the Government is completely discriminatory without rational and suffers from arbitrariness.

Having considered the rival contentions of the parties, it is well known principle of law that fixation of wage and age of superannuation of the doctor is squarely the function of the Government. The Court under the judicial review can strike down the offending provision. The Court cannot pass any order unless it is shown that the decision taken by the Government is arbitrary and violative of Article 14 of the Constitution of India. Hon'ble Supreme Court in the case of D.S. Nakasu v. Union of India reported in AIR 1983 SC 13 held that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation of which classification must satisfy the twin test of classification being founded on intelligible differentia which distinguish person or thing that are grouped together from those that are left out of group and that differentiation must have a rational nexus to the object sought to be achieved by statute in question. This Court is of the view, the age of superannuation has been classified on reasonable basis, satisfy twin test. In that circumstance equity does not have role to play for the purposes of interfering in the matter,



the ground which has been mentioned for enhancement of age of doctor who are treating human beings cannot be said, the same is not rational.

In such view of the matter, this Court does find any illegality in the decision of the State in refusing to enhance the age of superannuation of Veterinary Doctors.

Accordingly this writ petition is dismissed.

(Shivaji Pandey, J)

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