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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5235/2016 & CM APPL.21814/2016

% ***Judgment dated 21st July, 2016***

GOVT. OF NCT OF DELHI

..... Petitioner

Through : Mr.Sanjay Dewan, Adv. along with
Mr.Kapil Agnihotri, Legal Assistant in
the Health and Family Welfare
Department.

versus

DR. SHIV LATA GUPTA & ANR

..... Respondents

Through : Mr.R.K. Handoo, Mr.Aditya
Chaudhary and Mr.Yoginde Handoo,
Advs. for respondent no.1.
Mr.Ruchir Mishra and Mr.Mukesh
Kumar Tiwari, Advs. for respondent
no.2/UOI.

+ W.P.(C) 5236/2016 & CM APPL. 21816/2016

GOVT. OF NCT OF DELHI

..... Petitioner

Through : Mr.Sanjay Dewan, Adv. along with
Mr.Kapil Agnihotri, Legal Assistant in
the Health and Family Welfare
Department.

versus

DR. YOG RAJ HANDOO & ANR

..... Respondents

Through : Mr.Handoo, Adv. for respondent no.1.
Mr.R.V. Sinha and Mr.R.N. Singh,
Advs. for respondent no.2/UOI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Present writ petitions have been filed by the petitioner, Government of NCT of Delhi (hereinafter referred to as the '*Delhi Government*'), under Articles 226 and 227 of the Constitution of India seeking a direction to quash the common order dated 4.8.2015 passed by Central Administrative Tribunal (in short '*the Tribunal*') in OA No.3206/2014 and OA No.3212/2014 filed by Dr.Shiv Lata Gupta and Dr.Yog Raj Handoo, respondent no.1 (in both the writ petitions), whereby the said OAs were allowed by the Tribunal.
2. Both the Doctors had approached the Tribunal seeking a direction to the Delhi Government and the Union of India, respondent no.2 herein (hereinafter referred to as the '*Union of India*'), to give effect to their voluntary retirement notice under Rule 48-A of the CCS (Pension) Rules, 1972. Release of retirement benefits under the Service Rules were also prayed for. The O.As. filed by both the Doctors stand allowed vide impugned order dated 4.8.2015, which has led to the filing of the present writ petitions by the petitioner. We may notice that the impugned order has not been challenged by the Union of India.
3. Both the writ petitions are taken up for hearing with the consent of the counsel for the parties at the admission stage itself. Arguments were heard in both the writ petitions and we propose to decide the writ petitions by a common order since identical questions arise for consideration.
4. Mr.Handoo, Advocate, is representing both the Doctors (respondent no.1), who had also filed caveat petitions, which were disposed of on 31.5.2016. Mr.R.V. Sinha and Mr.Ruchir Mishra, Advocates, are

representing Union of India in both the writ petitions, respectively.

5. For the sake of convenience, the facts of W.P.(C) 5233/2016, pertaining to Dr.Shiv Lata Gupta, respondent no.1, are being noticed.
6. The brief facts of W.P.(C) 5233/2016 are that on 31.8.1987 Dr.Shiv Lata Gupta, respondent no.1, was appointed as a Medical Officer in the Central Health Services (CHS) on recommendation of the UPSC and was posted under the Delhi Administration. On 26.12.1991 she was promoted to the post of Senior Medical Officer. On 20.12.2002 she was promoted to the post of Chief Medical Officer.
7. In the year 2007, Delhi Health Services (DHS) published a notice in the newspapers seeking option from the existing members of the Central Health Services to be considered for appointment to the new service Delhi Health Services. The notice made it clear that option is being called for only for being considered and there is no automatic appointment under initial constitution.
8. It is the case of the Delhi Government that Dr.Shiv Lata Gupta confirmed severance of all connections from Central Health Scheme (in short '*CHS*') pursuant to the aforesaid advertisement. Similar averment is made with regard to Dr.Yog Raj Handoo.
9. On 3.9.2011, Dr.Shiv Lata Gupta, and on 12.9.2011, Dr.Yog Raj Handoo, applied for Voluntary Retirement Scheme (VRS). On 13.9.2011 and 26.9.2011, the notice of voluntary retirement of Dr.Shiv Lata Gupta and Dr.Yog Raj Handoo was forwarded by Deen Dayal Upadhyaya Hospital to the Delhi Government. On 24.11.2011, both the Doctors were placed under suspension since they were undergoing an investigation by the Anti Corruption Branch (ACB) on account of carrying out private practice. At the time when the application for VRS was pending, proceedings against the Doctors were being conducted by

the ACB, however, no objections were raised by the Doctors regarding their suspensions.

10. On 2.1.2012, the Government of India issued an office order notifying the date of decadrement of CHS Doctors, who had opted for DHS and severance of all their connections from CHS from 24.11.2010. On 11.6.2012, the Delhi Government affirmed the notification. On 9.7.2012, the suspension of both the Doctors was revoked by the Lieutenant Governor of Delhi w.e.f. 22.2.2012 and both the Doctors were directed to join their duties, which they did not. Thereafter the matter was taken up with the CVC. On 12.6.2013, the CVC after examination of the case of both the Doctors, opined that the matter be put to rest. Since the retiral dues were not being released, both the Doctors approached the Tribunal by filing separate OAs.
11. By the impugned order dated 4.8.2015, the Tribunal has quashed the Office Order dated 2.1.2012 and held that the notice of voluntary retirement stood automatically accepted as per Rule 48-A(2) of CCS (Pension) Rules, 1972. A direction has also been issued for release of retiral benefits to both the Doctors with interest.
12. Mr.Sanjay Diwan, learned counsel appearing on behalf of the Delhi Government, submits that the order passed by the Tribunal is illegal and arbitrary. It is further submitted that the notice of three months submitted by both the Doctors on 3.9.2011 and 12.9.2011, respectively, to the competent authority for voluntary retirement from service in terms of Rule 48-A(2) would not be automatically accepted for the reason that within three months of issuing notice of VRS, both the Doctors were placed under suspension vide order dated 24.11.2011 and, thus, the Tribunal has incorrectly applied Rule 48-A(2) to the facts of the present case, whereas in fact Rule 69 of CCS (Pension) Rules

should have been applied. It is submitted that in view of the order of suspension, it is deemed that the applications seeking voluntary retirement by both the Doctors would stand rejected. In view thereof, the direction passed by the Tribunal in the impugned order thereby granting consequential benefits of pension, gratuity, etc. with interest to both the Doctors is illegal, non-est and is liable to be set aside.

13. Counsel for the Delhi Government further submits that Rule 48-A requires a notice of three months from the appointing authority as well as the appointee. It is further submitted that Rule 48-A gives inherent power to the appointing authority to withhold the permission of voluntary retirement which inherent authority is not derogatory to Rule 48. It is further contended that the objective of making an application seeking voluntary retirement by the Doctors was to avoid disciplinary action, which was contemplated against them.
14. The next submission of Mr.Dewan is that the Tribunal has failed to appreciate that the Doctors had severed the relation of encadrement with the Union of India w.e.f. 24.11.2010, the date on which the encadrement is stated to be retrospectively operative. This averment has been made by Mr.Dewan in Ground 'E' of the writ petition. Mr.Dewan has further submitted that after the decadrement, the Doctors had not only severed all connections with the Government of India but this order was circulated in all the hospitals by the Delhi Government including Deen Dayal Upadhyaya Hospital, where both the Doctors were posted at the relevant time.
15. Learned counsel for the Delhi Government is supported by Mr.Sinha and Mr.Mishra, counsel appearing on behalf of Union of India, on this aspect alone i.e. ground 'E' of the writ petition. It is submitted by Mr.Dewan, counsel for Delhi Government, that in case the order dated

2.1.2012 is quashed (as held by the Tribunal) in the absence of any pleadings, it would have far reaching consequences to the extent that all those encadared to Delhi Health Scheme would stand to lose their transfer from CHS to DHS without any hearing afforded to them.

16. Counsel for the Delhi Government contends that both the Doctors had exercised their option on 23.2.2010 and joined DHS in response to the option dated 23.2.2010. Thus counsel for the Delhi Government submits that post decadrement, the Cadre Controlling Authority for the Doctors would be the Delhi Government. It is also contended that at the time when the applications for VRS of both the Doctors were pending, proceedings against the Doctors were being conducted by the ACB, however, no objections were raised by the Doctors regarding their suspensions and, thus, they cannot claim that their VRS should have been considered. It is next contended that the application seeking Voluntary Retirement could not have been processed on account of pending investigation in the matter relating to private practice and on account of disciplinary proceedings by the Department.
17. Mr.Handoo, learned counsel appearing on behalf of both the Doctors, respondent no.1, submits that the present writ petitions are gross abuse of the process of Court. Counsel contends that it is yet another attempt by the Government to harass the two Doctors, who have worked sincerely for more than 22 years and 23 years, respectively, with the Government. Mr.Handoo at the outset points out that till date neither any disciplinary proceedings have been initiated against both the Doctors nor any Charge Sheet has been issued. It is pointed out that even the CVC, vide Office Memorandum dated 12.6.2013, had advised the Government to put the matter to rest. In support of this contention, Mr.Handoo has drawn the attention of the Court to the Office

Memorandum dated 12.6.2013, a copy of which has been placed on record. Mr.Handoo submits that despite the Office Memorandum dated 12.6.2013 and the directions passed by the Tribunal, the Delhi Government continues to proceed with the matter and not a single penny has been paid to both the Doctors even though Dr.Shiv Lata Gupta is suffering from cancer and is in dire need of funds.

18. Mr.Handoo, while relying upon Rule 48A, submits that the applications seeking voluntary retirement would have deemed to be accepted after three months' notice period. It is clarified that Proviso to Rule 48-A(2) leave no room for doubt that where the Appointing Authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement shall automatically become effective from the date of expiry of the said period i.e. three months in the case of Dr.Shiv Lata Gupta from 2.9.2011 and three months from 12.9.2011 in the case of Dr.Yog Raj Handoo.
19. Mr.Handoo further submits that merely because both the Doctors were placed under suspension on 24.11.2011, it cannot be said that the order of suspension amounts to denial of voluntary retirement from service. Counsel contends that the guidelines to Rule 48-A as noticed by the Tribunal in the impugned order are crystal clear that “.... *Even where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice*”. Mr.Handoo submits that even otherwise the order of suspension was *non est* in the eyes of law as the order of suspension dated 24.11.2011 was forwarded to the Union of India, however, the Union of India

refused to endorse the same on the ground that the Doctors were employees of DHS.

20. Mr.Handoo also submits that the order of suspension was not even pressed by the Delhi Government and was withdrawn by the Lieutenant Governor of Delhi w.e.f. 22.2.2012. Additionally, Mr.Handoo relies on a decision rendered by the Supreme Court of India in the case of *State of Haryana v. S.K. Singhal*, reported at (1999) 4 SCC 293, wherein it has been held that mere pendency of the suspension of Departmental Enquiry or its contemplation does not result in the notice of Voluntary Retirement not coming into effect on expiry of the period specified.
21. Counsel for the Doctors further submits that even as per the understanding of the Delhi Government the application for voluntary retirement was being processed, which is evident from the fact that the Delhi Government sought CVC clearance. In support of this contention, reliance is placed on the communication dated 3.10.2013 (Although the date of the communication dated 3.10.2013 is not visible in the annexure filed by the writ petition but the same has been admitted by the counsel for the parties). This communication reads as under:

“Immediate

*GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
HEALTH & FAMILY WELFARE DEPARTMENT
9th Level A-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002*

F.No.7/10/90/H&FW/____

Dated : _____

To

*The Medical Superintendent
DDU Hospital, Hari Nagar
New Delhi.*

Sub:- Regarding Vigilance Clearance Report in r/o Dr. Shiv Lata Gupta, SAG and Dr.Yog Raj Handoo, CMO (NFSG) for the purpose of Voluntary Retirement.

Madam,

The vigilance status report of Dr.Shiv Lata Gupta, SAG and Dr.Yog Raj Handoo, CMO (NFSG) are required for the purpose of considering their Vountary Retirement request. It is therefore, requested to submit the vigilance status report on the enclosed proforma by 07/10/2013.

This may please be given Top Priority.

Encs.:- As above.

Yours faithfully

*(Anil Verma)
Dy. Secretary (H&FW)"*

22. Mr.Handoo further submits that in view of the decision rendered by the Supreme Court of India in the case of ***State of Haryana*** (supra), the submissions made by counsel for the Delhi Government cannot be considered by this Court. As far as the submission made by Mr.Dewan regarding quashing of communication dated 2.1.2012 is concerned, Mr.Handoo submits that this communication has been quashed by the Tribunal only qua the two Doctors and the apprehensions of the counsel for the Delhi Government and the Union of India are misplaced that it would affect a large number of Doctors. Counsel relies on para 29 of the impugned order wherein the Tribunal has categorically stated that the order of decadrement with retrospect effect cannot be held

operative qua the Doctors. Mr.Handoo clarifies that the Tribunal was forced to make such observations to lend clarity to the issue in question and on account of the shifting stand of the parties.

23. Mr.Handoo submits that as far as the Doctors are concerned they would have no objection if the retiral benefits are either paid by the Delhi Government or the Union of India and, thus, to that extent the communication dated 22.1.2012 may not be quashed or modified qua the two Doctors (respondent no.1) only. Counsel further submits that in a contempt filed before the Tribunal, the counsel for Delhi Government has already made a statement that Delhi Government would be releasing the retiral benefits to both the Doctors herein.
24. We have heard learned counsel for the parties and considered their rival submissions. The undisputed facts of the case are that both the petitioners were appointed as Medical Officers in the Central Health Services (CHS) and were posted under the Delhi Administration. They were promoted from time to time. In the year 2010, an option was given for opting of the DHS severing all connections from CHS. Both the Doctors confirmed severance of all connections from CHS. Both the Doctors applied under the Voluntary Retirement Scheme (VRS) on 3.9.2011 and 12.9.2011, respectively. The notices of voluntary retirement of both the Doctors were forwarded by Deen Dayal Upadhyaya Hospital to the Delhi Government. On 24.11.2011, both the Doctors were placed under suspension since they were undergoing an investigation by Anti Corruption Branch on account of carrying out private practice. On 2.1.2012, the Government of India issued an office order notifying the date of decadrement of CHS Doctors. On 9.7.2012, the suspension of both the Doctors was revoked by the Lieutenant Governor of Delhi w.e.f. 22.2.2012 and both the Doctors were directed

to join their duties, which they did not. Thereafter the matter was taken up with the CVC. On 12.6.2013, the CVC after examination of the case, opined that the matter be put to rest. Since the retiral dues were not being released, both the Doctors approached the Tribunal by filing the OAs, which were allowed by the Tribunal.

25. The arguments of Mr.Dewan, learned counsel for the petitioner, is two-fold i.e., firstly, the Tribunal has erred in issuing a direction to the Government to accept the voluntary retirement application and release the retiral benefits to the Doctors and, secondly, that having quashed the communication dated 2.12.2012 it would have far reaching consequences.
26. Rule 48-A(2) reads as under:

“48-A(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

27. Reliance of Rule 48 as also Rule 69 by the learned counsel for the petitioner, in our view, is absolutely misplaced. Rule 48-A leaves no room for doubt that in case an application seeking voluntary retirement is not refused before the expiry of the period specified in the notice, the retirement would become effective. The Proviso further clarifies that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of the expiry of the said period.

28. In the present case, the petitioner admittedly did not refuse the

application for grant of voluntary retirement. The only argument raised is that both the Doctors were placed under suspension and, thus, it would amount to a tacit refusal on the part of the Government. This submission of learned counsel for the Delhi Government is without any force and is only to be rejected in view of the decision rendered by the Apex Court in the case of *State of Haryana* (supra), wherein in para 13 it has been held as under:

“13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat case and as in Sayed Muzaffar Mir case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J.Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”

29. Another important aspect, which cannot be overlooked, is that admittedly till date no Departmental proceedings have been initiated against both the Doctors, nor any charge sheet has been issued and in fact the order of suspension stands revoked by the Lieutenant Governor

of Delhi.

30. The order of revocation of suspension issued by the Lieutenant Governor reads as under:

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
HEALTH & FAMILY WELFARE DEPARTMENT
9th Level A-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002*

NO.F. 342//C-249/2012/H&FW/2735-3734 Dated :09-07-2012

WHEREAS Dr.Y.R. Handoo, Head of Department, Plastic Surgery, Deen Dayal Upadhyay Hospital, Dr.M.S. Bisht, Health of Department, ENT, Deen Dayal Upadhyay Hospital and Dr.Shiv Lata Gupta, Senior Gynaecologist, Deen Dayal Upadhyay Hospital were placed under suspension under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, by the Competent Authority vide order No.F.342/C-249/2011/H&FW/8433-44 dated 24.11.2011.

And, whereas, the suspension review committee during the meeting held on 09.05.2012 has recommended for the revocation of suspension order of Dr.Y.R. Handoo, Dr.M.S. Bisht and Dr. Shiv Lata Gupta, in pursuance of sub rule 6 of rule 10 of CCS (CCA) rules, 1965 w.e.f. 22.02.2012 and orders accordingly.

However, the revocation of suspension will not effect ongoing enquiry in the matter contemplated by Anti Corruption Branch, Dte. Of Vigilance, GNCTD.

*BY ORDER & IN THE NAME OF
LT. GOVERNOR, DELHI*

*(PRAVEEN VERMA)
Dy. Secretary, (H&FW) ”*

31. Thus, to say that on account of departmental proceedings against both the Doctors, they were placed under suspension and for these reasons

the very request for voluntary retirement would stand automatically rejected is unacceptable to this Court. The order of suspension was revoked and till date no departmental proceedings have been initiated nor any proceedings have been initiated by the ACB. Thus, the Tribunal has rightly reached a conclusion that the applications seeking voluntary retirement would stand accepted in terms of Rule 48-A(2) of CCS (Pension) Rules, 1972.

32. It is not in dispute that an option was sought from the Doctors employed under the CHS giving them option of decadrement. This option was admittedly accepted by both the Doctors. The Tribunal was of the view that the decadrement could not have taken place retrospectively by the letter of decadrement dated 2.1.2012, however, it is not disputed before us that the salary was being paid by the Delhi Government to both the Doctors.
33. For the reasons aforestated, we find no merit in the present writ petitions. No grounds are made out to interfere in the impugned order passed by the Tribunal. Accordingly, writ petitions stand dismissed. However, as agreed by counsel for the parties, the impugned order dated 4.8.2015 passed by the Tribunal, as far as it relates to quashing of letter dated 21.1.2012, is set aside.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 21, 2016 msr

After the order was dictated, the matter was mentioned by the learned counsel for the petitioner. Original file was produced before us wherein the note signed in the afternoon by the Secretary (Health) has been produced, which reads as under:

“Put up request to HC plus direction that CAT will not hold us in contempt.”

Based on this note, learned counsel for the petitioner submits that he has instructions to state that the process of releasing the pensionary benefits to the Doctors would be completed latest by within six weeks from today. Let an appropriate affidavit be filed by the petitioner before the Central Administrative Tribunal as well as before the Court where the contempt proceedings are pending. We have no hesitation in recording that should the affidavit be filed by the petitioner before the Central Administrative Tribunal, the respondents would not press the contempt petition. Leave granted to both the Doctors (respondent no.1 in the present writ petitions) to approach this Court in case the undertaking given to this Court is flouted.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 21, 2016

msr