

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9667 of 2008

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Dr.Md.Shahabuddin @ Md.Shahabu, son of Late Neyamat Ali, resident of Mohalla-Maharajganj, P.O.+ P.S.-Rafiganj, District-Aurangabad, at present Working as Unani Medical Officer-cum-Officiating Indigenous Medical Officer, in Joint Hospital, P.S.-Chhatauni, District- East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Health Department, Government of Bihar, Patna
2. The Secretary, Health Department, Government of Bihar, Patna
3. Joint Secretary-cum-Director, Deshi Chikitsa, Government of Bihar, Patna
4. The District Magistrate, Motihari, District-East Champaran

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15060 of 2008

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Dr.Nikhath Rizvi, wife of Dr. S.M.A Usmani, Lady Medical Officer, Govt. Tibbi College and Hospital, Kadamkuan, Patna-3, resident of Mohallah-Naugarwa Colony, behind Naugarwa Mosque, P.O.-Mahendru, P.S.-Sultanganj, District-Patna-6

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Health Department, Government of Bihar, Patna
2. The Secretary, Health Department, Government of Bihar, Patna
3. Joint Secretary-cum-Director, Indigenous Medicine, Government of Bihar, Patna
4. The Deputy Secretary, Finance Department, Govt. of Bihar, Patna
5. The Principal, Govt. Tibbi College, Kadamkuan, Patna-3

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12144 of 2008

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Dr.Sachidanand Rai, son of Late Ishwar Rai, resident of Village-Ishwarpura, P.S.-Sahar, District-Bhojpur, at present posted as Manager, State Pharmacy of Ayurvedic and Unani Medicine, Rajkiya Ayurvedic College, Kadamkuan, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Family Welfare, Government of Bihar, Patna
2. The Joint Secretary-cum-Director, Indigenous Medicine, Government of Bihar, Patna
3. Principal Secretary, Department of Finance, Government of Bihar, Patna
4. The Deputy Secretary, Department of Finance, Government of Bihar, Patna.

.... Respondent/s

with



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Civil Writ Jurisdiction Case No. 11248 of 2008

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Dr.Abdul Hannan, son of Late Md. Eqbal Hussain, resident of 4E/36, Ram Krishna Path, North Sri Krishna Puri, Boring Road, Patna, P.O. & P.S.- Patliputra, District-Patna, at present working as Lecturer in Moaleyjat(Medicine) at Govt. Tibbi College, Kadamkuan, Patna-3, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Health Department, Government of Bihar, Patna
2. The Secretary, Health Department, Government of Bihar, Patna
3. The Joint Secretary-cum-Director, Indigenous Medicine, Government of Bihar, Patna
4. The Deputy Secretary, Finance Department, Govt. of Bihar, Patna
5. The Principal, Govt. Tibbi College, Kadamkuan, Patna-3

.... Respondent/s

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Appearance :

(In CWJC No.9667 of 2008)

For the Petitioner/s : Mr. Janardan Prasad Singh, Sr. Advocate
Mr. Dipak Kumar, Advocate

For the Respondent/s : Mr. (GA5)

(In CWJC No.15060 of 2008)

For the Petitioner/s : Mr. Arvind Kumar, Advocate

For the State : Mr. S.D. Yadav, AAG-IX
Mr. Prem Ranjan Kumar, AC to AAG-IX

(In CWJC No.12144 of 2008)

For the Petitioner/s : Mr. Shiv Kumar, Advocate
Mr. Sunil Kumar Jha, Advocate

For the Respondent/s : Mr. (GA6)

(In CWJC No.11248 of 2008)

For the Petitioner/s : Mr. Nand Kumar Singh, Advocate
Mr. Arvind Kumar

For the Respondent/s : Mr. (SC21)

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 21-09-2017

The petitioners have filed these writ petitions and claiming that they are entitled to work up to the age of 62 years and the act of the State Government to retire them at the age of 60 is



unsustainable.

The State Government has filed detailed counter affidavit and tried to refute the aforesaid contention. However, the records indicate that while considering the matter in the year 2012, a Bench of this Court directed for listing of the matter after identical cases like C.W.J.C. No. 12057 of 2011 and other cases are decided.

The office has placed the matter for consideration by pointing out that identical issues involved have been decided in C.W.J.C. No. 12057 of 2011 and other analogous cases on 14.02.2012 and thereafter the matter was considered by a Division Bench of this Court on 28.06.2016 in L.P.A. No. 852 of 2012 and analogous cases filed by the State Government. The Division Bench of this Court on 28.06.2016 has disposed of the L.P.A No. 852 of 2012 and other analogues cases filed by the State Government in the following manner :-

“16. Thus to that extent we set aside the judgment of the learned Single Judge. We would, therefore, dismiss the appeals of the State and allow the appeals of the postgraduate diploma holder doctors and the M.B.B.S. doctors of the Bihar Health Service. The result would be that with effect from 28.01.2011 up to 22.12.2011 any doctor of Bihar Health Service who has been made to superannuate upon attaining the age of 62 years would be held to have been wrongly superannuated. They would be entitled to the same benefit that was conferred upon the



postgraduate doctors of the Institute. As noted in the very beginning, these writ petitions/appeals were kept pending and even if extended service is ordered, the beneficiaries thereof would have since retired. In view of the interim orders that were passed in the writ proceedings as well as in these appellate proceedings as also in the facts and circumstances of these cases, the only relief to which the beneficiary doctors would now be entitled to would be additional remuneration over and above, their retrial dues which they would get being the difference of pay for the period of three years of extended service i.e. the difference of pay as between pensionary benefits and the pay which they would have been entitled to get, they being in service for three more years. They were ready and willing to work, they had been asserting their rights to carry on working but wrongly they have been deprived of opportunity to work. State would thus be liable to pay.

17. As all beneficiary doctors would now be nearing 70 years of age it is expected that the State would finalise their payments within a period of three months and pay within the same period. Needless to say they would be few in numbers.”

Today also, when the matter is taken up, learned counsel for the State argues that all the petitioners have retired and therefore, no relief can be granted to them. However, on perusal of para 16 and 17 of the order passed by the Division Bench on 28.06.2016 in L.P.A. No. 852 of 2012 and other analogous cases, would go to show that even in the cases considered by the Division Bench, the employees had retired.



That being so, as identical cases have been disposed of by a Division Bench in the manner as indicated hereinabove, there is no reason as to why the petitioners be also not granted the same benefits.

Accordingly, this writ petitions are disposed of and the State Government is directed to implement the directions contained in L.P.A. No. 852 of 2012 and other analogous cases on 28.06.2016, as reproduced hereinabove and indicated in para 16 and 17 of the aforesaid order in the case of the present petitioners also within a period of three months from the date of receipt/production of a certified copy of this order.

With the aforesaid, the applications stand disposed of.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03/10/2017
Transmission Date	NA

