

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1190 of 2013

IN

Civil Writ Jurisdiction Case No. 10431 of 2012

- =====
1. The State of Bihar through the Principal Secretary, Department of Labour Resources, Government of Bihar, Patna
 2. The Principal Secretary, Department of Finance, Government of Bihar, Patna
 3. The Principal Secretary, Department of General Administration, Government of Bihar, Patna
 4. The Director (Health Services) Employees State Insurance Scheme, Department Of Labour Resources, Government of Bihar, Patna
 5. The Joint Secretary, Department of Labour Resources, Government of Bihar, Patna
 6. The Incharge Medical Officer, Employees State Insurance Hospital, Katihar
- Appellants

Versus

Dr. Sharfe Alam S/O Late Md. Usman Resident of Markan Colony, Dehria, P.S. Katihar, District - Katihar at Present Posted as Homeopathic Medical Officer, Employees State Insurance Hospital, Katihar

.... Respondent

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Appearance :

For the Appellants : Mr. Ranjan Kumar Singh, AC to PAAG-2RAHI
For the Respondent : Mr. Dinu Kumar, Advocate
Mr. Ranjan Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-04-2017

Heard counsel for the parties.

The private respondent, Dr. Sharfe Alam, filed C.W.J.C.

No. 10431 of 2012 when the State of Bihar especially Department of Health chose to enhance the age of retirement of the members of the Bihar Health Service and Bihar Medical Education Service from 60 to 62 by amending Rule 73 of the Bihar Service Code in February, 2009. The immediate cause of action, however, arose when the State



Government vide Memo No.9544 dated 01.09.2010 amended Rule 73 of the Bihar Service Code and even age of retirement of employees appointed under the Insurance Medical Service Cadre too was enhanced from 60 to 62. When the private respondent demanded enhancement of age of retirement, he was told that he cannot be a beneficiary of the Notification since it is limited to Unani and Ayurveda Medical Officers alone.

The learned single Judge went through the material and arguments of the parties and came to a considered opinion that the decision of the State Government not to extend the benefit of enhanced age of retirement to Homeopathic Medical Doctors was an irrational exercise since it violated Article 14 of the Constitution of India.

After having heard learned counsel for the appellants, the State authorities, who are challenging the order dated 28.02.2013, the Court fails to understand as to why such an appeal has been filed in the very first place, because the private respondent is also a Doctor appointed under Insurance Medical Services Cadre and he also comes under the uniform umbrella of indigenous medicine, which includes Doctors of Homeopath, Ayurved and Unani.

Even during the course of hearing of this appeal, the Court wanted to understand the rationality of keeping the



homeopathic doctors out of the zone of consideration from the benefit of age of retirement. Except for the submission that they are different, nothing tangible is shown that they are different from rest of the service. In fact the subsequent notification as well as some of the earlier notifications issued by the State Government which has been brought on record as Annexure-P, P/1 and P/2 in the counter affidavit of the private respondent belies the stand of the State.

Now there is no dispute because subsequently the age of superannuation has been enhanced for one and all to 65 then 67. That further strengthens the case against the state authorities and, therefore, the decision of the learned single Judge to give a direction in favour of the private respondent was warranted and called for. There is no infirmity with such a decision which is required to be interfered with.

Appeal of the State lacks merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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